Groupe d'Etats contre la corruption
Group of States against Corruption

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

21 June 2013

Confidential
Greco Eval IV Rep (2012) 7E

FOURTH EVALUATION ROUND

Corruption prevention in respect of members of parliament, judges and prosecutors

EVALUATION REPORT

NETHERLANDS

Adopted by GRECO at its 60th Plenary Meeting
(Strasbourg, 17-21 June 2013)

FOURTH EVALUATION ROUND

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EXECUTIVE SUMMARY

1. In the Netherlands, prevention of corruption in respect of Members of Parliament, judges and prosecutors relies to a large degree on mutual trust, openness and public scrutiny, in addition to the fact that members of these professional categories do not enjoy any immunity from prosecution for criminal conduct. There are few mandatory regulations, restrictions and even less supervision. Parliamentarians, but also judges and prosecutors, are instead encouraged to fully engage in society, through accessory activities, to avoid being isolated in an ivory tower. This system appears to be fairly effective and public trust in the integrity of Members of Parliament, judges and prosecutors is noticeably higher than in the average of EU countries. As a result of this high level of trust integrity has, until recently, not been among the priority areas addressed by the Dutch authorities.

2. There are few rules pertaining to the integrity of Members of Parliament and this topic has traditionally been left to political parties and fractions to deal with, according to their own systems of values and beliefs. The system is reactive, relying mainly on the media to expose misconduct and on the parliamentarian concerned to step down, on his/her own initiative or at the request of his/her political party or fraction. GRECO believes that there is room for improvement and that the Parliament, as an institution, could take on a more proactive role to increase the awareness of its members – many of whom do not have much experience of parliamentary work – towards ethics, integrity and exposure to possible conflicts of interest. It is recommended to develop codes of conduct for Members of both Chambers of Parliament, with their participation, to review current registration requirements as regards interests, assets and liabilities, to ensure supervision and enforcement of the existing and yet-to-be established rules and to extend the guidance and training on ethical matters available to parliamentarians.

3. Members of the judiciary have a long standing reputation of independence and impartiality, and public trust in their integrity is high. The institutions of the judiciary are striving to maintain this public trust and, in response to a few incidents involving some judges and prosecutors, have recently been carrying out important efforts to raise awareness of their members concerning ethics and integrity. Integrity has been chosen as a core value in the Agenda of the Judiciary 2011-2014 and a comprehensive integrity programme is being implemented in 2012-2013. It comprises an inventory and update of the existing rules, promotion of the integrity of judges through the discussion of ethical dilemmas and dedicated counselling, as well as communication of these efforts to the public. GRECO supports this policy, but considers that a limited number of areas deserve more attention. This concerns in particular the issue of substitute judges who, because of their important role in the judicial system, need to benefit from appropriate guidance on possible conflicts of interest.

4. Compared with judges, the prosecution service is one step ahead in implementing a similar integrity policy towards its members. This policy aims at enhancing integrity and preventing misconduct, through an updating of the applicable regulations and the creation of a safe climate for an on-going discussion of integrity challenges within each prosecutor's office. It also contains elements for a swift reaction when misconduct does occur, such as regulations and instructions in the event of breaches of integrity and the selection and training of specialised investigators. GRECO welcomes the thorough and balanced approach adopted by the prosecution service in this integrity policy.

I. INTRODUCTION AND METHODOLOGY

5. The Netherlands joined GRECO in 2001. Since its accession, the country has been subject to evaluation in the framework of GRECO's First (in March 2003), Second (in October 2005) and Third (in June 2008) Evaluation Rounds. The relevant Evaluation Reports, as well as the subsequent Compliance Reports, are available on GRECO's homepage (http://www.coe.int/greco).

6. GRECO's current Fourth Evaluation Round, launched on 1 January 2012, deals with "Corruption Prevention in respect of Members of Parliament, Judges and Prosecutors". By choosing this topic, GRECO is breaking new ground and underlining the multidisciplinary nature of its remit. At the same time this theme has clear links with GRECO's previous work, notably its First Evaluation Round which placed strong emphasis on the independence of the judiciary, the Second Evaluation Round which examined, in particular, the public administration and the Third Evaluation Round which focused on corruption prevention in the context of political financing.

7. Within the Fourth Evaluation Round, the same priority issues are addressed in respect of all persons/functions under review, namely:

- ethical principles, rules of conduct and conflicts of interest;
- prohibition or restriction of certain activities;
- declaration of assets, income, liabilities and interests;
- enforcement of the applicable rules;
- awareness.

8. As regards parliamentary assemblies, the evaluation focuses on members of national Parliaments, including all chambers of Parliament and regardless of whether the Members of Parliament are appointed or elected. Concerning the judiciary and other actors in the pre-judicial and judicial process, the evaluation focuses on prosecutors and on judges, both professional and lay judges, regardless of the type of court in which they sit, who are subject to national laws and regulations.

9. In preparation of the present report, GRECO used the responses to the Evaluation Questionnaire (Greco Eval IV (2012) 8E) by the Netherlands, as well as other data, including information received from civil society. In addition, a GRECO evaluation team (hereafter referred to as the "GET"), carried out an on-site visit to the Netherlands from 1 to 5 October 2012. The GET was composed of Ms Nina BETTETO, Supreme Court Judge, Vice-President of the Supreme Court, Member of the Consultative Council of European Judges (CCJE) (Slovenia), Mr Olivier GONIN, Legal Advisor, International Criminal Law Unit, Federal Office of Justice (Switzerland), Ms Marja TUOKILA, Counsel to the Legal Affairs Committee, Parliament (Finland) and Mr Geert VERVAEKE, Professor of Psychology at the Law Faculty of Leuven University, former President of the High Judicial Council and former member of the executive board of the European Network of Councils of the Judiciary (Belgium). The GET was supported by Ms Sophie MEUDAL-LEENDERS and Mr Yuksel YILMAZ from GRECO's Secretariat.

10. The GET met with the Presidents of the House of Representatives and of the Senate, Members, former Members and senior civil servants of the Parliament, as well as representatives of political parties. The GET also interviewed representatives of the Ministry of the Interior and Kingdom Relations, the Ministry of Security and Justice, the Council for the Judiciary and the Board of Procurators General. Moreover, the GET held interviews with Presidents, justices and/or judges of the Supreme Court, the Court of Appeal of Arnhem, the Courts of Assen, Haarlem, Leeuwarden and Zutphen, the Prosecutor General with the Supreme Court, as well as representatives of the Prosecution Service Integrity Bureau, the Prosecution Service Head Office, the Prosecution Offices of The Hague and Rotterdam-Dordrecht and the Study Centre for the

Judiciary. Finally, the GET spoke with the Deputy Ombudsman, academicians, journalists and a representative of Transparency International.

11. The main objective of the present report is to evaluate the effectiveness of measures adopted by the authorities of the Netherlands in order to prevent corruption in respect of Members of Parliament, Judges and Prosecutors and to further their integrity in appearance and in reality. The report contains a critical analysis of the situation in the country, reflecting on the efforts made by the actors concerned and the results achieved, as well as identifying possible shortcomings and making recommendations for further improvement. In keeping with the practice of GRECO, these recommendations are addressed to the authorities of the Netherlands, which are to determine the relevant institutions/bodies responsible for taking the requisite action. Within 18 months following the adoption of this report, the Netherlands shall report back on the action taken in response to the recommendations contained herein.

II. CONTEXT

12. Public perception of the existing level of corruption in the Netherlands has historically been low and has stayed at that level for nearly a decade. The Netherlands ranks among the least corrupt 20 countries on Transparency International's yearly corruption perception index (CPI). Besides many other surveys and studies[1] pointing in the same direction, most of the interlocutors with whom the GET met during the on-site visit also emphasised that corruption is not a major problem in the Netherlands.

13. In terms of the focus of GRECO's Fourth Evaluation Round, unlike in many other countries, the Dutch Parliament is not at the top of the list of the least trusted institutions. According to a recent special survey (Eurobarometer) issued by the European Commission, public distrust in the integrity of Members of Parliament (hereafter MPs) is lower than that of public officials in charge of awarding contracts and permits[2]. The same study reveals that only 27% of those surveyed in the Netherlands think that corruption is widespread among national politicians, which is a lower level than the average levels recorded within the 27 member states of the European Union (57%). The Dutch MPs and the Parliament have to be commended for attracting this level of public trust with relatively few regulations and even less supervision pertinent to integrity issues. Nevertheless, like some interlocutors, the GET considers that the current rules on integrity are insufficiently developed, which might hamper this positive image and the credibility of the Dutch parliament.

14. In so far as members of the judiciary are concerned, their perceived level of corruption is very low. The Eurobarometer mentioned above indicates that only 16% of respondents think that corruption is widespread among members of the judiciary (EU average 37%). Despite this background, a few cases of misconduct or mistakes involving judges[3] and prosecutors[4], which received wide media coverage, as well as a desire to be exemplary and more proactive as regards integrity, have led the institutions of the judiciary to initiate comprehensive integrity programmes which aim to develop and update regulations and to increase the awareness of their members, as well as their image in society.

15. GRECO believes that the present report, with its in-depth analysis and recommendations, can assist the authorities of the Netherlands in their proactive efforts to further the level of integrity and public trust in some of its crucial institutions, namely Parliament, the judiciary and their members.

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[1] e.g. http://info.worldbank.org/governance/wgi/sc_country.asp
[2] Special Eurobarometer 374, February 2012
[3] e.g a judge, upon request of another retired judge to whom he was acquainted, rendering a decision in favour of one of the parties in a construction development case.
[4] e.g a prosecutor abusing his position to prevent the arrest of a member of his friend's family.

III. CORRUPTION PREVENTION IN RESPECT OF MEMBERS OF PARLIAMENT

Overview of the parliamentary system

16. The Netherlands is a parliamentary democracy. The Dutch Parliament, which is called the States General *(Staten-Generaal)* in the Constitution, consists of two chambers: the lower chamber is the House of Representatives *(Tweede Kamer der Staten-Generaal)* and the upper chamber is the Senate *(Eerste Kamer der Staten-Generaal)* (article 51, Constitution). The House of Representatives is composed of 150 members who are elected directly by Dutch citizens by proportional vote for a 4-year term (article 54, Constitution). The 75 members of the Senate are elected, also by proportional vote for a 4-year term, indirectly by the members of the provincial councils, who are themselves elected by the national residents of the provinces (article 55, Constitution). Members of the States General are expected to represent the entire people of the Netherlands and not the particular interests of their electors (article 50 and article 67 paragraph 3, Constitution).

17. The main function of the Chambers of the States General is to act as co-legislators and to check whether the government is carrying out its duties properly. Additionally, the House of Representatives plays a role in formulating policy by submitting motions asking the government to legislate on a particular subject or expressing an opinion on the policy it pursues[5]. The legislative function of the Senate involves approving bills that have been passed by the House of Representatives. Only then can a bill become a law. The Senate has no right to initiate or amend a bill and may only reject or approve the bills submitted to it by the House of Representatives.

18. Candidates for the House of Representatives or the Senate must be Dutch nationals who have reached the age of eighteen and have not been disqualified from voting (article 56, Constitution). A person may be disqualified from voting if s/he has committed a criminal offence for which disqualification is a possible sanction, if s/he has been condemned to a custodial sentence of at least one year and if the court has imposed disqualification from voting as an additional sanction (article 54, Constitution). A member of the States General loses his/her mandate if s/he no longer meets one of the above listed conditions for membership and/or if s/he holds a position which is incompatible with membership.

Transparency of the legislative process

19. The Constitution provides that "*acts of The States General shall be enacted jointly by the Government and the States General*" (article 81, Constitution). Accordingly, the process of introduction of a bill can be initiated by ministers, state secretaries or members of the House of Representatives. Once the text of a bill is ready, it is sent to the Advisory Division of the Council of State, which examines it in terms of substance, legal content and quality of the legislative drafting.

20. A bill drafted by the government is submitted to the King, together with the opinion of the Advisory Division of the Council of State and the response to that opinion. The King then presents the bill with a covering letter to the House of Representatives. In the House of Representatives, each bill is dealt with initially by the committee responsible for the policy sector in question. If the committee considers that the bill has been adequately prepared, it forwards the draft for debate in a plenary sitting of the House of Representatives. After a bill has been passed by the House of Representatives, it is sent to the Senate. Once the Senate adopts the bill, it is signed by the King, the

[5] In the Netherlands it is possible for members of the public to have an item put on the agenda of the House of Representatives by means of a citizens' initiative. For this purpose, they must obtain 40,000 statements of support from persons who have Dutch nationality and are over the age of eighteen.

Minister concerned and the Minister of Security and Justice, who publishes it in the Bulletin of Acts and Decrees.

21. Draft bills, along with the opinion of the Advisory Division of the Council of State and the government's response to it, are made public after they are presented to the House of Representatives. Consultation on bills is organised with interested groups or a broad online consultation process[6] may be decided by the minister concerned. All documents about a bill can be consulted online[7] and the latest reports on the progress of a bill through Parliament, along with the latest voting results, can be found on the website of the House of Representatives[8] and the website of the Senate[9].

22. In principle, the plenary debates on a bill in both Chambers are public. That said, article 66, paragraph 2 of the Constitution states that "*the sittings shall be held in camera if one tenth of the members present so require or if the President considers it necessary*". Debates in both Chambers, as well as debates of the House of Representatives' committee meetings, can be viewed or listened to live on the Chambers' websites, where voting results are also published. Debates of the House of Representatives can also be viewed later using the parliamentary catch-up service[10].

23. Under the Rules of Procedure of the House of Representatives (article 37), meetings of committees must be held in public unless the Chamber, acting on the proposal of a committee member or a minister, decides that they will be held in camera. The GET was told that committee meetings of the Senate are open to the public in principle, but that lack of space in meeting rooms sometimes prevented the public from attending. Written reports or lists of decisions of committee meetings of the Senate are made public and can be found on its website.

24. Proceedings and documents of committee meetings and plenary sessions held in camera are secret unless the committee or the chamber concerned decides to lift that secrecy (Articles 143-144 of the Rules of Procedure of the House of Representatives and Article 81 of the Rules of Procedure of the Senate).

25. The GET did not hear or come across any information challenging the adequacy of the transparency of the legislative process in the Netherlands. It is clear that a number of good disclosure practices (such as online consultation process) are in place, that enable easy public access to proposed and adopted legislation, and allow for follow up of plenary sessions of both Chambers of the States General.

<u>Remuneration and economic benefits</u>

26. The financial remuneration for Members and former Members of the States General and their dependants is regulated by act of the States General, with a two-thirds majority (article 63, Constitution).

27. Members of the House of Representatives, who work on a full time basis, receive a monthly remuneration of €7,311.56[11]. Members of the Senate, who perform their duties on a part-time basis (they only meet once a week, on Tuesdays), receive a monthly remuneration of €1,998.28.

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[6] http://www.internetconsultatie.nl
[7] https://zoek.officielebekendmakingen.nl/zoeken
[8] http://www.tweedeKamer.nl/Kamerstukken
[9] http://www.eerstekamer.nl
[10] debatgemist.tweedekamer.nl
[11] In the Netherlands, the average yearly personal income, including the economically inactive such as children and the elderly, was €22,100 in 2010 and €34,000 when these groups are excluded. Source: CBS. http://statline.cbs.nl/StatWeb/publication/?VW=T&DM=SLNL&PA=70957ned&D1=a&D2=0-1,l&D3=0&D4=a&D5=0&D6=a&HD=080523-1743&HDR=G2,G4,T,G5&STB=G1,G3 (accessed 27 June 2012)

28. Some additional benefits are provided to the members of the House of Representatives and/or the Senate, as follows:

- If civil servants are awarded a one-off payment which is deemed to be of a general nature, members of the Chambers will receive a payment on the same basis;

- Members of the Chambers receive an end-of-year bonus in accordance with the provisions fixed for civil servants;

- Members of the House of Representatives may choose between an annual public transport season ticket (valid for first-class rail transport) and an allowance for commuting expenses in accordance with the commuting allowance for civil servants, other than the costs of public transport;

- Members of the Chambers receive an allowance for non-commuting travel expenses equal to the allowance that civil servants receive for the use of their own motor vehicle in cases where public transport is not possible or would be impractical;

- Members of the Chambers receive a subsistence allowance that depends on the distance from the member's place of residence to the premises of the House;

- Members of the Chambers receive an annual expense allowance of €2,509.27 and €2,389.59, respectively, for the costs incurred in connection with their membership;

- Members of the Senate receive an annual amount of €2,787.45 to enable them to make provisions for occupational disability, old age and death.

29. Additional allowances are granted to the Presidents of Chambers, their deputies and the leaders of the parliamentary groups.

30. During and after the on-site visit, the GET did not hear or come across any allegations or cases regarding misuse of the funds allocated to the MPs. Rules regarding benefits are very detailed and the amounts are modelled upon those applicable to civil servants. The GET heard, however, that it is possible for MPs to hire their relatives as assistants and that some such cases had been uncovered by the press. It considers this matter worth of close monitoring, in order to avoid any perception of favouritism or nepotism and any damage to the reputation of Parliament.

<u>Ethical principles and rules of conduct</u>

31. There is not one specific code that regulates the ethics and conduct expected from the members of the States General. The Constitution includes articles requiring MPs to represent the interest of the general public and to discharge their duties faithfully (articles 50 and 60). The Penal Code, administrative law and the Rules of Procedure of the House of Representatives or the Senate also comprise rules that apply to parliamentarians either directly, or because they are covered by the general norms that apply to wider ranges of public officials. In addition, MPs are subject to certain reporting requirements as regards their outside positions and interests, as well as gifts received and sponsored foreign trips (see paragraphs 53-54). Likewise, members of the Senate have an obligation to disclose any outside positions and interests.

32. An important written document including moral values and principles is the text of the oath which MPs swear before taking office. By taking this oath, MPs state that they have not done anything which may legally debar them from holding office. They swear allegiance to the Constitution and that they will faithfully discharge their duties (article

60, Constitution). According to the authorities, MPs who breach the oath may face criminal proceedings for committing perjury. The text of that oath is laid down in Section 2 of the Ministers and Members of the States General (Swearing-In) Act and reads as follows:

> **The oath**
>
> 'I swear (affirm) that in order to be appointed as a member of the States General I have not given or promised, directly or indirectly, any gift or favour under any name or on any pretext whatever.
>
> I swear (affirm and promise) that I have not accepted and will not accept, directly or indirectly, any present or promise in exchange for doing or refraining from doing anything in this office.
>
> I swear (promise) allegiance to the King, to the Charter for the Kingdom of the Netherlands and to the Constitution.
>
> I swear (promise) that I will faithfully perform all the duties which my office lays upon me. So help me, Almighty God!'

33. The GET learned that the main reason for the absence of a uniform code of conduct/ethics in the Dutch Parliament was that public authorities have been reticent to mingle with what they saw as the internal affairs of political parties, which traditionally have had different moral principles and values. The oath having a central role in the Dutch system, integrity is seen first and foremost as a matter for individual MPs themselves. They have to determine their position on ethical questions taking into account their own conscience, the law, voters and the media. Political parties are also accountable for integrity matters, as they are responsible for selecting potential MPs and placing them in a certain order on a list of candidates for elections. Some of them do have internal codes of conduct and screen their potential candidates to elections on integrity-related issues, but this is not the case for all. It was also stressed to the GET that the media played an important watchdog role, thanks to which any ethical misconduct by an MP would come to light. Political parties were said to be very watchful of their reputation and would, in such a situation, ask the concerned MP to step down. Parliament was seen by some of the GET's interlocutors as having only a subsidiary role in integrity matters, when it was itself at stake as an institution.

34. The GET was also informed that the issue of adopting a uniform code of conduct/ethics had been discussed in Parliament and that it had been rejected by a majority of members of the House of Representatives and by the College of Seniors of the Senate[12]. Several reasons were given to the GET by its interlocutors, e.g., that there were only few problems/cases in practice; that the level of integrity among MPs was already high and that MPs were cautious in their actions because of the media; that there was no common understanding among parliamentarians of what is ethical and what is not – an argument that somewhat contradicts that of a general high level of integrity of MPs; that before regulating, a clear idea of the regulation's purpose and added value was necessary, also considering that it would have financial implications on the state budget; that MPs are elected by the public and are only accountable to the public, through elections, for their conduct.

35. The GET is not convinced by these arguments. Firstly, it was made aware of occasional cases of ethical misconduct by MPs. Secondly, relying only on political parties and the media for control may cause unequal treatment, with the risk of similar

[12] The College of Seniors, which meets on a weekly basis, is comprised of the leaders of the political groups in the Senate and presided by the President of the Senate. The authorities pointed out after the visit that it discusses ethical issues.

situations being reported by the press and dealt with by the parties differently. This could cause incomprehension in the public and be detrimental to the Parliament's credibility. The GET also understood that the investigative role of the press had come under pressure in recent years, because of financial constraints. Thirdly, the GET was under the impression that MPs rely heavily on their accountability towards the public and the voters and it is concerned that this might indicate a lack of awareness and commitment towards ethics and integrity. Finally, as to the idea that supervision over compliance with a code would have financial implications on the State budget, the GET does not consider it decisive. The GET points out that judges, who are also the representatives of an independent state power, have themselves adopted several ethical regulations and guidelines and that all elected local councils are obliged to adopt a code of conduct.

36. The GET is of the strong opinion that it is advisable for the Parliament to take integrity matters into its own hands and not to entrust any other institution with the task of protecting its own reputation and that of its members. Concerns, values, and needs of political parties and of the national Parliament might differ and the purpose of ethical codes adopted by political parties is to protect and improve their own reputation, not that of the Parliament. It is worth noting in this connection that, even though the level of public trust in the national Parliament in the Netherlands is higher than that of the political parties[13], it is not as high as the one enjoyed, for instance, by the judiciary. Furthermore, while some political parties have set an example in raising the awareness of their members and elected representatives to ethics and integrity, leaving the regulation and supervision of the MPs' conduct mainly to them bears a risk of peer-protection, i.e. some political parties might be tempted to hide or cover up the misbehaviour of their members in order to prevent any damage to the party's reputation. Drafting and adopting a code of conduct/ethics would demonstrate the commitment of Parliament towards integrity. It would create joint expectations among the MPs and the public as to what conduct is to be expected from parliamentarians. It would prompt discussions among MPs about acceptable and unacceptable conduct and would increase their awareness about what is expected of them. The GET believes that the educational value of the preparation of a code and of keeping it up to date are important in a Parliament marked by a relatively high turnover of members. In light of the foregoing and in line with guiding principle 15 of Resolution (97)24 on the twenty guiding principles for the fight against corruption, **GRECO recommends that codes of conduct for the members of both Chambers of Parliament be developed and adopted with the participation of their members and be made easily accessible to the public (including notably guidance on prevention of conflicts of interest, gifts and other advantages, accessory activities and financial interests, disclosure requirements, misuse of information, contacts with third parties such as lobbyists).** The specific matters referred to in this recommendation will be examined further in the following paragraphs. In this context, the GET welcomes the motion unanimously adopted by the House of Representatives on 12 March 2013 on the need to review existing legislation, policy and enforcement in order to put forward proposals for improvement. It also welcomes the subsequent establishment of a committee to carry the motion out and trusts that this report will contribute to policy development in this field.

Conflicts of interest

37. There are no detailed rules governing conflicts of interest of parliamentarians. As explained above, it is considered that ethical conduct is initially a matter for assessment by political parties when recruiting prospective MPs and is later judged by electors when casting their vote. Therefore, the main responsibility to decide on whether a conflict of interest exists in the performance of their duties is vested on the MPs themselves. The

[13] According to the Standard Euro barometer published by the European Commission in November 2011, 47% of those surveyed tend not to trust the national parliament, whereas 63% tend not to trust political parties and only 32% tend not to trust the judiciary.

GET was told that despite the absence of a formal advisory mechanism, however, MPs may in practice seek advice within their political party or from experienced fellow members on the appropriateness of their actions.

38. There is no statutory provision barring an MP from taking part in a vote on a matter that concerns him/her personally, either directly or indirectly or in which s/he is involved as a representative. Therefore, the question of how a vote relates to any personal interests of an MP is again a matter for the person concerned to decide. The GET heard different views on how an MP or a senator would deal in practice with such an issue. Some interlocutors indicated that in such a case, the parliamentarian would leave the session on a voluntary basis. Others were of the opinion that this potential problem would be ignored and that it was generally accepted that all parliamentarians vote on all issues brought before them. This discrepancy of opinions is, in the GET's view, a logical consequence of the absence of common guidelines about acceptable behaviour in the Chambers of Parliament. It invites therefore the authorities to specifically deal with this issue and to provide internal rules and guidance to MPs on conflicts of interest in the course of the preparation of codes of conduct, as per recommendation i (paragraph 36).

Prohibition or restriction of certain activities

Gifts

39. Members of the States General are not subject to any restriction from accepting gifts. Members of the House of Representatives have opted instead for transparency of accepted gifts. MPs have to register gifts which have a value in excess of €50, as well as foreign travel at the invitation of third parties, no later than one week after receipt of the gift/their return (article 150a, Rules of Procedure of the House of Representatives). The registers of gifts and of travels may be consulted online on the House of Representatives' website[14]. Reminders to declare gifts are sent to MPs by the House of Representatives' administrative services two or three times a year. Inspection of the gift register by the GET revealed that more than a third of MPs had not declared any gift[15]. Such a reporting requirement does not exist for the members of the Senate. Nevertheless, the GET was told that the Senate keeps a list of the gifts received by its members on behalf of the Senate.

40. The GET notes that the register of gifts does not cover other benefits, such as hospitality and invitations to different kinds of events. It has misgivings about the lack of rules and guidance available to parliamentarians about their expected conduct when receiving gifts and other advantages, especially given the imperfect compliance with the declaration requirements highlighted above. Unlike representatives of other state powers – civil servants, judges and prosecutors – who have adopted prohibitions or rules for dealing with gifts, thereby acknowledging that the receipt of a gift might be seen to compromise one's judgment or integrity, members of the legislative power prefer to leave MPs and parties to deal with these matters themselves, each in their own way. As rules adopted by other professional categories show, what matters is not only the value of a gift or an invitation, but the identity/position of the person who offered it and the context in which it was given. The GET believes it would be helpful if a clearer line was drawn, and explained to parliamentarians and to the public, between acceptable and unacceptable gifts, benefits and hospitality. It urges therefore the authorities to tackle the matter of gifts and other advantages in connection with the implementation of the recommendations contained in this part of the report, in particular the recommendation to develop codes of conduct (paragraph 36) and the recommendation to widen the scope of the registration requirements to also cover other advantages (paragraph 55).

[14] http://www.tweedekamer.nl/kamerleden/openbare_registers/
[15] Register consulted on 13 March 2013.

Incompatibilities and accessory activities

41. The Constitution establishes that no one may be a member of both Chambers and that a member of the States General may not be a minister, state secretary, member of the Council of State, member of the Court of Audit, of the Supreme Court, Prosecutor General or Advocate General at the Supreme Court. A member of the States General may also not be national ombudsman or his/her deputy or deputy of the Prosecutor General at the Supreme Court (article 57).

42. The States General and European Parliament Act prohibits the holding of the following offices simultaneously with the membership of the Chambers: King's Commissioner, member of the armed forces in active service, official at the Council of State, the Court of Audit or the office of the National Ombudsman, official at a ministry or at an agency, service or corporation that comes under a ministry, member of the Management Board of the Employee Insurance Agency or the Social Insurance Bank referred to in the Work and Income (Implementing Structure) Act, member of the supervisory committee referred to in section 64 of the Intelligence and Security Services Act 2002, and Kingdom representative. There is, however, no incompatibility between the membership of Parliament and the office of judge or prosecutor. The GET makes reference in this connection to paragraphs 96 and 160 of this report and to the recommendation contained in paragraph 96. An MP who holds one of these incompatible offices is automatically put on leave of absence, discharged from the duty of performing the incompatible office and ceases to perceive remuneration and allowances for that office for the duration of his/her mandate, after which s/he resumes his/her former office.

43. The elected MPs or their agents, before taking up their duties, must file with the representative assembly a declaration disclosing all public offices they hold (section V 3 Elections Act).

44. If a member of either Chamber holds an incompatible position within the meaning of article 57, paragraph 2 of the Constitution, his/her membership is terminated automatically (section X3, subsection 1 Elections Act). In other cases, the member concerned notifies the president of the Chamber concerned that s/he no longer fulfils one of the requirements for membership. If s/he fails to give notice, the president of the Chamber informs him/her that, in his/her opinion, s/he no longer fulfils the membership requirements and thus ceases to be a member. If the member disagrees with the decision of the president, s/he may request the opinion of the Chamber on the matter. A committee, composed of members of the Chamber is then established to investigate the case. The Chamber gives a final ruling on the case after the publication by the committee of its report (article 3, Rules of Procedure of the House of Representatives and article 5, Rules of Procedure of the Senate).

45. Aside from the incompatible offices detailed above, there are no rules preventing MPs from engaging in accessory activities. On the contrary, such activities are generally welcomed, as they demonstrate that MPs are involved in society. That said, members are required to report their outside positions and interests to the offices of the Secretary General of their Chamber (see paragraphs 53-54).

Financial interests

46. There is no prohibition or restriction to the financial interests that MPs may hold. They are only subject to an obligation of declaration of their outside positions and interests and of the income they receive from them (Section 5 Remuneration (Members of the House of Representatives) Act and Section 3b, Remuneration (Members of the Senate) Act).

Contracts with State authorities

47. There are no prohibitions or restrictions on Members of the States General entering into contracts with State authorities. The general legislation on public procurement is fully applicable in this context.

Post-employment restrictions and contacts with third parties

48. Members of the States General are not subject to any restriction on the duties they may take up after their office, nor as regards their contacts with third parties. The sole requirement that the members of the House of Representatives are bound to follow is to report foreign trips made at the invitation of third parties, no later than one week after their return to the Netherlands (article 150a, Rules of Procedure of the House of Representatives, see above under gifts).

49. In July 2012, a register of lobbyists was introduced in the House of Representatives. Lobbyists have to declare for which company they work for and for what purpose, in order to obtain a permanent access pass to the parliamentary premises. The register is publicly available on the House of Representatives' website[16]. The GET learned that this register was introduced to curb practices of some lobbyists, who were abusing their formerly free right of access to the House of Representatives. Several interlocutors pointed out, however, that a significant number of former members of the House of Representatives and senators were employed by lobbies and that, as former parliamentarians, they still had free access to the premises of Parliament. The GET understood that the House of Representatives was to examine this issue and it encourages it to reflect on the necessity of introducing adequate rules/guidelines for such situations.

50. More generally, as with other integrity-related issues highlighted in this report, it is important that parliamentarians have appropriate guidance on how to deal with lobbyists – or indeed, with any third party approaching them in order to sway public policy on behalf of specific interests. The GET considers that this issue needs to be dealt with in the context of the recommendation contained in paragraph 36.

Misuse of confidential information

51. MPs are bound to respect the rules on confidentiality and secrecy of meetings and documents (Confidential Documents Rules and articles 143-147 of the Rules of Procedure of the House of Representatives, article 42 of the Rules of Procedure of the Senate). A register of confidential documents received by the House of Representatives or by any of its committees is kept at the office of the Secretary General.

Misuse of public resources

52. Rules are in place to prevent the misuse of public resources for private or political gain. Expenses and benefits have to be justified. Misuse of public resources may constitute a criminal offence, which may entail a special procedure before the High Court for violation of law committed by MPs while in office (see paragraph 57).

<u>Declaration of assets, income, liabilities and interests</u>

53. Article 150a of the Rules of Procedure of the House of Representatives requires its Members to report their outside positions and interests, with the yearly income or expected income from these positions[17]. This declaration is to be made no later than the

[16] http://www.tweedekamer.nl/over_de_tweede_kamer/lobbyistenregister/index.jsp
[17] According to Article 150a of the Rules of Procedure of the House of Representatives, "*income is deemed to mean salary within the meaning of section 9 of the Salaries Tax Act 1964, less the final salary components*

first of April following the calendar year in which the income was received. There is no cap on the amount of money a member may earn from his/her accessory activities, but this amount is deducted from his/her monthly remuneration as an MP (article 3, Law on compensation of MP income). As indicated above, Members of the House of Representatives also have to declare gifts exceeding the value of €50 and foreign trips made at the invitation of third parties. This information is entered on three separate registers kept at the office of the Secretary General. It was indicated to the GET that the office of the Secretary General sends two reminders per year to MPs concerning their declaration duties. The registers of accessory activities, gifts and foreign trips are accessible to everyone and are published on the internet[18]. The Secretary General also publishes twice a year the statements entered in the register of outside positions and interests.

54. Likewise, members of the Senate must disclose their outside positions and interests in a letter of credence deposited at the office of the Secretary General of the Senate (Law on the remuneration of the members of the First Chamber). The register of senators' accessory activities is available at the Secretary General's office for the inspection of the media and the public and is also published on the Senate website[19] under the CV of each member. Unlike members of the House of Representatives, members of the Senate do not have to report the income they earn from their accessory activities, gifts received and sponsored foreign trips. It was explained to the GET that this difference stemmed from the fact that, unlike membership in the House of Representatives, membership in the Senate is a part-time function and requires its holders to also have other remunerated activities.

55. Besides the above-mentioned registers, there are no other specific rules concerning declaration of assets, liabilities and interests of members of the Dutch Parliament. During the visit, several of the GET's interlocutors expressed their views that the current registers were inadequate for bringing to light many potential or actual conflicts of interest. The GET was provided with information about some cases uncovered by the media involving, for instance, former members who started working in business companies operating in the fields in which they were dealing as an MP, MPs omitting to disclose certain accessory activities, or of some declarations being too general to fulfil their purpose of providing accurate information about possible conflicts of interest[20]. In several of these reported situations, MPs had not disregarded applicable rules, but these were too general to capture the information that could have revealed a conflict of interest. In one of the cases reported, an MP was providing advice to certain lobbies; declaration requirements only obliged him to declare the activity of providing advice, not to whom such advice was provided, even though this information would have proven relevant in the light of his legislative activity. In the GET's view, in a system which opted to deal with conflicts of interest and ethical misconduct through transparency and mutual trust rather than restriction and control, public registers fulfil their purpose only if they give an image as complete and precise as possible of an individual MP's actual interests, as regards for instance his/her consulting activities or his/her assets and liabilities. The deficiencies of the current registers, identified above, could be addressed by increasing the categories of assets and interests that should be registered and by requiring members to provide more detailed and uniform information concerning their accessory activities and other interests. In this regard, widening the scope of the registration requirements to the MPs' spouses and dependant family members as well as to the shares in companies and debts to credit agencies could also be considered. Due concern needs to be given of course to the privacy of MPs and their relatives, but the GET takes the view that it is possible to strike a reasonable balance between the protection of individual privacy rights and the need to protect the legislative process from improper

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referred to in Section 31 of that Act, or profit from business activities within the meaning of part 3.2 of the Income Tax Act 2001".

[18] http://www.tweedekamer.nl/kamerleden/openbare_registers/index.jsp

[19] http://www.eerstekamer.nl/alle_leden

[20] http://www.nrcnext.nl/nextfiles/files/2010/11/hillen1.pdf

influence and expose possible conflicts of interest. Proportionate solutions may involve disclosure of assets above an appropriate threshold or disclosure of some information to a designated supervisory authority (see below), without making it available to the public. Therefore, **GRECO recommends that (i) current disclosure requirements applicable to the members of both Chambers of Parliament be reviewed with a view to increasing the categories of interests and the level of detail to be reported, so as to provide all the relevant and necessary information on interests of members of Parliament (e.g. outside activities and positions, assets, liabilities) and (ii) that consideration be given to widening the scope of disclosure to include information on spouses and dependent family members, as appropriate (it being understood that such information would not necessarily need to be made public).**

Supervision and enforcement

Rules on confidentiality and use of public resources

56. Breach of the rules on confidentiality of meetings and documents may entail the exclusion of the MP concerned from attending all meetings of one or more committees for not more than one month and/or from accessing confidential documents for not more than the remainder of the parliamentary session. Such a decision is taken by the House of Representatives, upon the proposal of the Presidium (articles 145 and 147 of the Rules of Procedure of the House of Representatives). Similar rules are in place at the Senate, with the exclusion of the senator concerned being decided by the President (articles 95 and 96 of the Rules of Procedure of the Senate).

57. Misuse of public resources may constitute a criminal offence. A special procedure applies for violations of law made while in office. Article 119 of the Constitution requires that present and former MPs, ministers and state secretaries be tried by the Supreme Court for offences committed while in office. Proceedings are instituted by Royal Decree or by a resolution of the House of Representatives. This procedure has never been used to date. MPs do not enjoy any immunity, except for anything they express orally or in writing during the sessions of the States General or one of their committees (article 71 of the Constitution).

Rules on disclosure

58. As explained above, there are no rules compelling members of the States General to declare potential conflicts of interest and/or barring them from accepting gifts, holding financial interests or engaging in accessory activities. It naturally follows that there are no supervisory mechanisms in Parliament, nor enforcement measures.

59. The same lack of supervision and disciplinary sanctions or other enforcement measures applies, however, to the few disclosure rules that are in place, namely the obligation for Members of both Chambers to disclose their accessory activities as well as, for members of the House of Representatives, the obligation to declare gifts received and sponsored trips abroad. As explained above, the system relies on openness and mutual trust, as well as on the watchdog role of the media. The GET repeatedly heard in this context that the press exerted significant pressure on MPs and had revealed several cases in which MPs had not complied with their reporting obligations or had submitted incomplete declarations. It seems, however, that aside from public exposure of these MPs, no consequences of these events have been drawn by Parliament and the political career of these members was not affected negatively. The GET was informed that the Parliament had not even held a debate on these issues, a situation that some of its interlocutors attributed to the fact that no entity in Parliament was currently feeling responsible for the topic of Members' integrity and that this issue was low on the Parliament's agenda. The GET also recalls in this context concerns expressed by some

interlocutors about the media's current financial constraints, which put pressure on the investigative role of the press.

60. The GET is aware that public control of MPs, through free access of the media and the public to the online registers and through the sanction of the voters, is a central feature of the system in the Netherlands. All its interlocutors agreed on the need to preserve this feature. At the same time, compliance of MPs with their reporting obligation raises concern, as evidenced by. the cases reported by the media referred to in the above paragraph. In addition, consultation of the online registers by the GET revealed that 36 of the 150 members of the House of Representatives had declared gifts in 2011. This number tripled in 2012. More than half of the members had not declared any trips abroad (40 members had declared trips in 2011 and 60 in 2012)[21]. Filed declarations also showed noticeable variations as regards the degree of detail of the information entered.

61. The GET takes the view that public control is more effective if it is accompanied by administrative safeguards – not least in order to ensure that the public gets the information it needs to perform its control function. Bearing in mind the above recommendations to further develop the rules on MPs' conduct and their declaration duties, the GET believes that it is only logical to require some kind of monitoring and enforcement of such standards by competent bodies, as several of its interlocutors clearly recognised. It is fully aware of the consensus towards preserving the Dutch culture of openness and mutual trust and of the concerns expressed by some persons it interviewed that no unnecessary bureaucracy, or excessive financial constraints for the state budget, be created. Clearly, it is up to the Dutch authorities themselves to decide how appropriate monitoring could best be organised. In the view of the GET, such a role could, for example, be efficiently exercised by existing parliamentary bodies such as relevant committees or the Office of the Secretary General of each Chamber, provided they are equipped with adequate resources and investigative powers. This would also show to the public the commitment of the Parliament to adopt a more proactive approach towards upholding the integrity of its members. Finally, in order to be credible, the system will have to foresee the imposition of appropriate sanctions in case of infringements of the rules. In light of the preceding paragraphs, **GRECO recommends that appropriate measures be taken to ensure supervision and enforcement of the existing and yet-to-be established declaration requirements and other rules of conduct of members of Parliament.** Such arrangements will also need to be reflected in the codes of conduct recommended above.

<u>Advice, training and awareness</u>

62. At the beginning of each new legislature, an induction course on rules and procedures, which includes the rules on the registers is organised for new Members by the Executive Secretary of the House of Representatives. Attendance of this training is not compulsory, but it was pointed out to the GET that a high percentage of new members do participate. The course is also open to their staff. An introduction course is also organised by the staff of the Senate for its new members, at the beginning of each new legislature. Integrity issues form part of this course. Written introductory documentation is also distributed.

63. The main responsibility for informing MPs about integrity issues and the conduct expected from them is vested in the political parties represented in the States General. The GET was told that in practice, even if there was no formal setup for providing advice to MPs about ethical dilemmas, they would always turn to their peers, in particular more senior members or the head of their fraction. The authorities also underlined that members of the Senate have the opportunity to consult the Secretary General or the President of the Senate on ethical matters and possible conflicts of interest. Although

[21] Registers consulted on 12 March 2012.

these practices are valuable as such, it is not clear to what extent they are used. The GET heard during the on-site visit that MPs sometimes face ethical dilemmas and are unsure about the appropriate behaviour in a given situation. It also recalls that the Dutch Parliament is marked by a relatively high turnover of members, who spend a short time in office.

64. The information gathered by the GET strongly suggests that there is room for improvement in the current arrangements for raising the awareness of MPs towards integrity and providing advice when necessary. A more institutionalised training and counselling system would raise the profile of integrity matters within Parliament and sharpen the awareness of MPs. For an ethics and conduct regime to work properly, MPs must themselves develop fair and realistic rules and channels and mechanisms to instil and to uphold strong ethical values. All these call for targeted measures of a practical nature which may include induction and regular training, issuing frequently asked questions, hand-on publication and guidance, establishing an official and permanent source of advice for MPs. The GET considers this especially important as new rules and mechanisms on integrity are recommended to be introduced in this report. Therefore, **GRECO recommends in respect of both Chambers of Parliament, (i) the establishment of a specific source of confidential counselling with the mandate to provide parliamentarians with guidance and advice on ethical questions and possible conflicts of interests in relation to specific situations; and (ii) the provision of specific and periodic training for all parliamentarians on ethical questions and conflict of interests.**

IV. CORRUPTION PREVENTION IN RESPECT OF JUDGES

Overview of the judicial system

65. The geographical distribution of first and second instance courts in the Netherlands has been recently revised, in order to improve the specialisation of courts and the efficiency of the judicial system. Since the entry into force of the bill on the "Revision of the judicial map" on 1 January 2013, the territory of the Netherlands is divided into ten districts – instead of 19 prior to this reform – which coincide with the country's police regions. Each district has its own court. Further to an amendment to the bill adopted by the Senate in December 2012, the East-Netherlands district has been, because of its size, split in two as from 1 April 2013, which has brought the total number of district courts to 11. Each court has a number of sub-district venues, in which civil cases of a value of up to €25,000 and minor criminal cases are tried by a single judge. The district courts are made up of a maximum of five departments which always include the administrative, civil, criminal and sub-district departments. A number of district courts have a separate fifth department hearing family and juvenile cases, when the number of such cases is considerable. Cases are heard either by a single judge or, for the more complex ones, in full-bench panels of three judges.

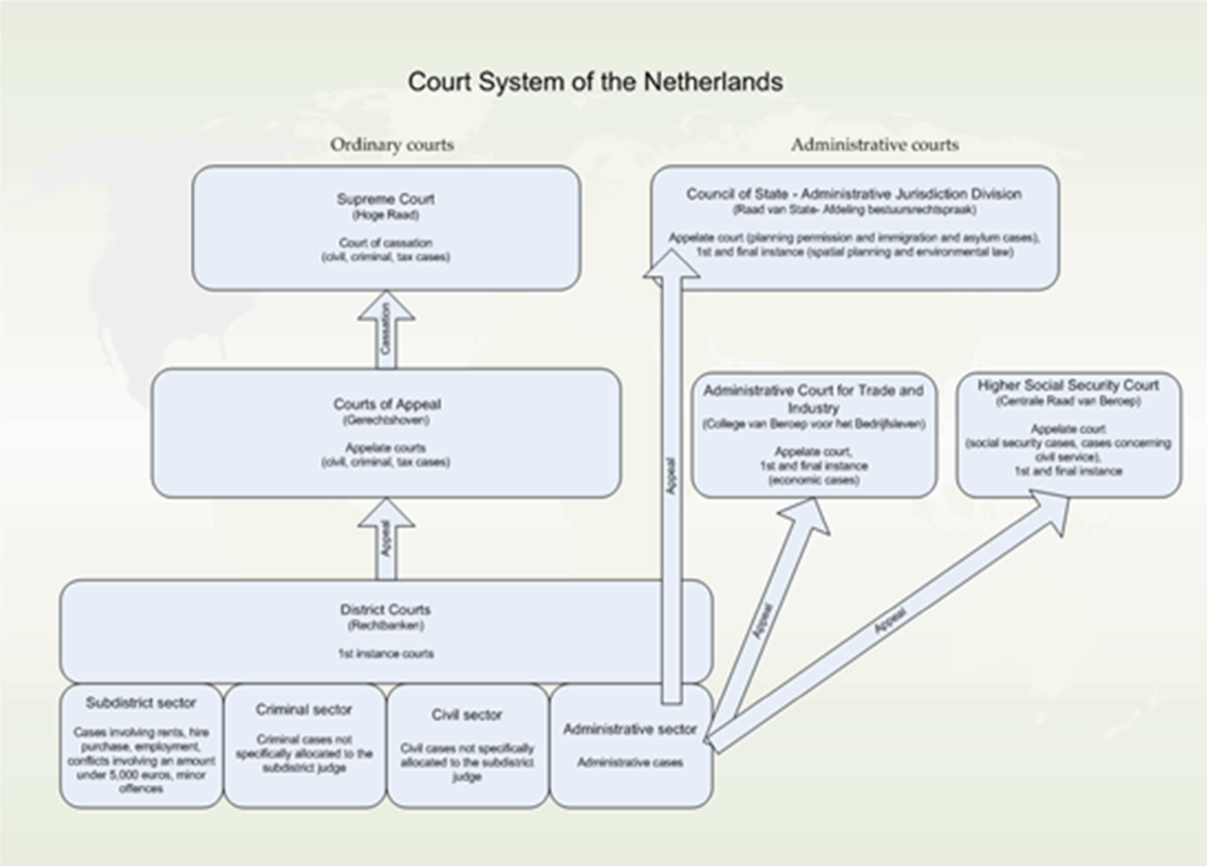
66. The revision of the judicial map has also reduced the number of areas of Court of Appeal jurisdiction from five to four: The Hague and Amsterdam in the west, Arnhem-Leeuwarden for the east and the north and 's-Hertogenbosch in the south. In addition to criminal and civil cases, these appeal courts also deal with taxation cases, in their capacity as administrative courts.

67. The highest court in the fields of civil, criminal and tax law is the Supreme Court. Its members are appointed by a Royal Decree (a decision by the Cabinet of Ministers) from a list of three persons drawn up by the House of Representatives of the States General (article 118, Constitution). The Supreme Court is currently composed of a president, six vice-presidents, 27 justices and five justices extraordinary (article 72, Law on the composition of the judiciary and the organisation of the justice system, hereafter "Law on the organisation of the judiciary"). It is responsible for hearing appeals in cassation and for carrying out a number of specific tasks by law, e.g. to try present and former members of the States General, Ministers and State Secretaries for the offences committed while in office (article 119, Constitution). A Procurator General's office is attached to the Supreme Court. Its main task is to provide the Supreme Court with independent advisory opinions on how to rule in a case.

68. There are three special tribunals in the Netherlands that are competent in specific areas of administrative law. The Central Appeals Tribunal is a court of appeal which is mainly active in legal areas pertaining to social security and the civil service, areas for which it is the highest judicial authority. The Trade and Industry Appeals Tribunal, also known as Administrative High Court for Trade and Industry, is a specialised administrative court which rules on disputes in the area of social-economic administrative law. The Administrative Jurisdiction Division of the Council of State is the country's highest general administrative court, which hears appeals lodged by members of the public, associations or commercial companies against decisions by municipal, provincial or central governmental bodies. It also hears disputes among two public authorities.

69. The chart below summarises the current court system of the Netherlands[22].

[22] Further to the revision of the judicial map, the district courts now comprise departments instead of sectors.



70. The Council for the Judiciary forms part of the judicial system, but does not administer justice itself. It took over a number of operational tasks from the Minister of Security and Justice, such as the allocation of budgets, supervision of financial management, personnel policy, ICT and housing etc. The Council is also involved in the activities of recruitment, selection and training of judges and court personnel. It carries out its tasks in these areas in close consultation with the boards of the courts. Another central task of the Council is to promote quality within the judiciary system and to advise on new legislation which has implications on how justice is administered. Finally, the Council acts as a spokesperson for the judiciary at a national and international level.

71. The Council for the Judiciary is made up of four members, two of whom come from the judiciary and two of whom previously held senior positions at a government department. The Council has a Bureau to assist it in carrying out its activities. The Members of the Council are appointed by Royal Decree, based on a list of recommendations by the Minister of Security and Justice, in agreement with the Council and after consultations within the judiciary. Members are appointed for six years and may be re-appointed for an extra term of three years.

72. The bill on the revision of the judicial map has also changed the composition of the boards of the courts, which consist now of three members: two judges, among whom the president of the court, and one non-judge, who functions as the director of operations. The boards are in charge of the administration of justice, as well as of the general management and day-to-day running of the courts. Furthermore, the previous mandatory division by sectors within the courts was lifted.

Recruitment, career and conditions of service

73. All judges in the Netherlands are formally appointed for life, but actually retire when reaching the legal retirement age of 70. There are neither lay judges nor a jury system. There are, however, substitute judges, who are either judges in training or legal

professionals appointed to work on a part-time basis, while keeping their main functions. Judges are classified in 12 categories, from trainee judicial officer to the president of the Supreme Court, according to which their salary is determined. They are not specialised but are appointed to a court, in which they work in a specific department (civil, criminal or administrative). A rotation policy is decided and carried out by the boards of the courts, which generally ensures that judges can work in two departments, for a period of up to four years, after which they change departments. There is also a possibility for further specialisation.

74. Candidates to a position of judge must have a law degree and at least two years of prior work experience in the legal field. Following a selection process (for more details on the different steps in this process, see below under prosecutors) consisting of tests, interviews and assessments of their basic skills and personality, their suitability for a position in the judiciary is assessed by the Judicial Selection Committee (*Selectiecommissie rechterlijke macht*, hereafter SRM)[23]. The next steps depend on the total duration of their prior work experience. Candidates with two to six years' experience, which represent about 20% of the total of the newly-appointed judges, were until recently appointed to the "Raio education programme", which lasted six years and comprised four years of training and two years of internship in a related position outside the judiciary. The selection and training of so-called "Raio" judges is currently being re-designed by the Council for the Judiciary, in consultation with the Ministry of Security and Justice. The new system will be implemented as from 1 January 2014.

75. Candidates meeting the minimal requirement of two years legal experience will be admitted to a four-year education programme, alternating training and internships in different work environments, to become a judge. Candidates with more work experience will be accepted into a one to three-year training programme, tailor-made to their specific knowledge and experience. The selection procedure will be identical for both programmes. Once a position in a court is opened, candidates are advised to first carry out an orientation interview at their local court. A formal written application will follow, which will be assessed at national level by means of a set of tests and interviews. The final interview will be carried out by a national selection commission, consisting of twelve members, half of whom are judges and the other half external members. The names of successful candidates will be transmitted to the court that opened the position, in order for it to start a local selection procedure consisting of one or more interviews with a local selection committee. The precise modalities of the local procedures will differ among the courts.

76. The GET notes that in the future, the background check for candidate judges will comprise the issuance of a certificate of good conduct by the Ministry of Security and Justice, according to draft amendments to the Law on the legal position of judicial officials. Similar checks take place for all recruitments within the civil service, but those performed for candidate judges will be more severe, because of the nature of the judicial functions. In the meantime, judicial data for a background check are provided, upon request, to the Chair of the SRM. For certain so-called "confidential positions" of an especially sensitive nature within the civil service, a confidential security screening by the General Intelligence and Security Service takes place, that looks among other things at the potential financial vulnerability of candidates. Discussions on the possibility of introducing this screening within the judiciary have been on-going since 2007 between the Ministry of Security and Justice, the Council for the Judiciary and the Dutch Association for the Judiciary (*Nederlandse Vereniging voor Rechtspraak*, hereafter NVvR), but have not yet led to any outcome, because of concerns for the judges' independence.

77. As explained above, vacancies within a court are opened by the board of the court. Upon positive judgment by the national selection commission, candidates' names

[23] The members of the SRM are appointed and dismissed by the Council for the Judiciary for a period of three years. The SRM comprises 70 members, of whom 35 are chosen among judges, 7 among the Public Prosecution Service and 28 members represent civil society.

are communicated to the court, which starts the local procedure of selection, consisting of one or more interviews with the local selection committee. The court meeting (meeting between all the judicial officers within the court) also plays a role in the final approval of the chosen candidate. The formal appointment of the judge takes place by Royal Decree upon recommendation by the Minister of Security and Justice. A similar procedure applies to the promotion of judges. Promotion happens on the basis of national job profiles which have been drawn up by the Council for the Judiciary in close cooperation with the Board of Presidents. Vacancies are published on the national intranet of the judiciary and selection is done at local level to ensure that the candidate chosen fits with the court in which s/he will work. Unsuccessful candidates may appeal the decision of the selection committees to the Central Appeals Tribunal.

78. Vacancies concerning the positions of members and State Counsellors of the Council of State are published in the Government Gazette and a professional journal and on the Council's website, indicating the profile of the candidate(s) being sought. Members and State Counsellors are appointed for life by Royal Decree, upon recommendation by the Minister of the Interior and Kingdom Relations in agreement with the Minister of Security and Justice.

79. Judges of the Supreme Court are appointed by Royal Decree upon the proposal of the House of Representatives. Nominees are chosen from a list of six recommended candidates, to be provided by the Supreme Court. The candidate determination processes followed by the Supreme Court and the House of Representatives have not been regulated. When a seat is vacant, the Supreme Court notifies the House of Representatives, providing the list of candidates along with their each candidate's curriculum vitae. The preferred candidate is placed on top of the list, with a written explanation for this choice. According to long-standing practice, the House of Representatives generally follows this preference.

80. As far as mobility is concerned, a distinction is made between the mobility of judges between courts and within the same court. The former is only possible upon a request by the judge concerned and a decision of the Council for the Judiciary. That said, mobility between courts is encouraged by incentives, such as placement in a higher salary scale or granting of a mobility allowance – the allocation of which is regulated to prevent arbitrary application. Rotation of judges within a court, on the other hand, is administered by the boards of the courts on the basis of the circulation policy adopted by them.

81. A judge may be dismissed on his/her request, by Royal Decree, signed by the Minister of Justice and Security. S/he may also be dismissed if s/he is permanently unsuitable to fulfil his/her duties because of long term illness or by final conviction for a serious criminal offence and/or imprisonment. A judge shall be dismissed if s/he ceases to be a Dutch national or if s/he becomes unsuitable to perform his/her tasks for reasons other than illness[24]. In this case, an "Advisory Committee on Dismissal for Incompetence of Judicial Officers", composed of a court president, a judge charged with the administration of justice and a member of a court's management, will advise the Supreme Court about the unsuitability of the judge. In the event of involuntary dismissal, the power to dismiss is held by the Supreme Court.

82. The salary categories for judges are laid down in Article 7 of the Law on the legal position of judicial officials. The judicial officers employed by the judiciary are classified as follows: Category 7: senior justice on a Court of Appeal; senior judge at a District Court, Category 8: justice on a Court of Appeal; senior judge at a District Court, Category 9: judge at a District Court. The gross monthly salaries belonging to these categories range from €5254,13 to €7912,43 as of January 2012. In addition, judges are

[24] Examples of reasons for dismissal other than illness are accepting an office that is incompatible with the office held, being placed under guardianship, being declared bankrupt etc.

entitled to a year-end bonus and a holiday allowance. Judges and members of the boards of the courts receive a monthly tax-free compensation for literature, representation, cleaning of the robe and some other small expenses. Similarly to other civil servants, judges receive compensation for commuting and for lodging, if necessary. Substitute judges do not receive a salary, but their subsistence expenses are covered and they receive a *per diem* fee for their work.

Case management and court procedure

83. Policy concerning the allocation of cases is formulated at the level of each court, on the basis of a model court statute and a department statute that have been adopted by the meeting of presidents (a forum gathering the presidents of all courts). Consequently, case allocation policies may differ between courts as a result of the differences between their respective size and workload. There are, however, common features of the case allocation policies of the courts: a) all cases can, in principle, be allocated to all judges, b) categories of cases can be allocated within a department to a specific judge or groups of judges in connection with their experience and speciality, c) individual judges cannot influence the allocation of individual cases, d) certain groups of (follow-up) cases are not allocated to a judge who previously handled the case, e) If a judge withdraws him/herself from a case, the case is allocated to another judge. Case allocation policy also forms part of the judicial performance measuring system. It is one of the performance indicators used to measure the field "Impartiality and Integrity of Judges".

84. In practice, cases are classified by the board of the court according to the legal field, level of complexity and knowledge and experience required for the handling and decision of the case. The case is then allocated to a single or three-judge section. In this process, if facts and/or circumstances are known, as a result of which the allocation of the case to one or more judges could harm judicial impartiality, the allocation does not take place. Once the case is allocated, withdrawal of a judge is only possible at his/her own request or at the request of the parties to the case.

85. The GET learned that as a result of the current decentralisation of case allocation policies, there is much dissimilarity between courts on the detailed rules on case allocation. From this lack of sufficient overview stems a feeling among some members of the public that the case allocation methods sometimes lack transparency and clarity. Aware of these perceptions, the meeting of presidents formed in 2012 a Case Allocation Working Party in order to introduce more uniformity in the case allocation policies countrywide. The Administrative Jurisdiction Division of the Council of State was also involved in this process. The Working Party was tasked with the drafting of a Case Allocation Code, which was to be adopted by the meeting of presidents in the autumn of 2012. This Code is a short document, containing eight general articles which are meant to better inform the public about what to expect regarding the allocation of court cases. The Code, *inter alia*, promotes the principle of publicity on the courts' websites of case allocation criteria, proclaims the ultimate responsibility of court boards in case allocation and foresees rules on when to reallocate cases of judges who have been transferred to another section within the court.

86. The GET understood that this general document was to be followed by a more specifically-formulated Regulation on Model Case Allocation in which rules would be indicated per department/type of case, together with the possible exceptions. This document is still in preparation. The GET supports the current efforts of the judiciary to make case allocation policies more transparent and uniform. The recent revision of the judicial map and the concomitant reduction of the number of courts certainly offers opportunities to strive for a better balance between the desirable use of random methods in case allocation, while maintaining the necessary specialisation of judges. A proper communication of the results of these initiatives to the public could be expected to increase public confidence and help dispel any doubts regarding case allocation policies.

87. The Code of Civil Procedure provides that a judge shall ensure that there is no unreasonable delay in the proceedings and shall implement measures, if necessary, at the request of a party or ex officio (article 20). In addition, the parties are also obliged towards each other to prevent unreasonable delays in the procedure. Various sources of law contain terms that must be observed by the judge during the hearing of a case. If there is a breach of one of these terms, one of the parties may start proceedings against the State for an unlawful act performed if the reasonable term referred to in Article 6 of the European Convention on Human Rights is significantly exceeded[25].

88. Administration of justice is public, except in cases provided for by law (article 121 of the Constitution). According to the Code of Civil Procedure, the judge may exclude the public in the interest of the public order, public morals, State Security, in the interests of minors, and if the hearing in public would seriously harm the proper administration of justice. Similar grounds are foreseen in the Code of Criminal Procedure and the General Administrative Code. Free online access to judicial decisions is ensured through the website of the Dutch judiciary[26].

Ethical principles and rules of conduct

89. Article 117 of the Dutch Constitution prescribes that judges are appointed for life, that they may not be suspended or dismissed unless upon a court decision (security of tenure) and that issues concerning the legal status of judges such as salary shall be regulated by law. In addition to this constitutional provision, the Law on the organisation of the judiciary prohibits the court managements, the Council for the Judiciary and the Minister of Security and Justice from discussing the procedural handling, substantive assessment or the decision of a specific court (operational independence) (articles 23, 96, and 109 respectively).

90. Besides these statutory core values, the following self-regulatory texts contain non-binding recommendations for judges to further enhance their impartiality and integrity:

- The Judicial Impartiality Guidelines[27] were adopted in 2004 by the Netherlands Association for the Judiciary (NVvR) and the meeting of presidents of the courts. They contain ten recommendations, accompanied by comments, on how to deal with cases involving relatives, acquaintances, previous jobs, previous involvement in a case, etc. They provide a tool for individual judges in assessing their impartiality in a specific case and whether they should withdraw or request to be excused. Some of the recommendations are directed also at substitute judges, judges in training and courts;

- The Guidelines on Ancillary Positions for Judicial Officers and Court Officials[28] were adopted in 2009, also by the meeting of presidents and the NVvR. They are complementary to the Judicial Impartiality Guidelines and are meant to offer a framework for the assessment of the appropriateness of accessory activities exercised by judges and court personnel;

- The Code of Conduct for judicial personnel[29] was drawn up in 2010 by the Council for the Judiciary and the meeting of presidents. It is a short framework

[25] According to Article 42 of the Dutch Code of Civil Procedure, the State is responsible for damage caused by the (trainee) judicial officer during the performance of his duties to a third party and in respect of which he would be liable according to the law.
[26] http://www.rechtspraak.nl/Uitspraken-en-Registers/uitspraken/Pages/default.aspx. An English version of the judiciary's website may be found at www.judiciary.nl.
[27] http://www.rechtspraak.nl/Procedures/Landelijke-regelingen/Algemeen/Pages/Leidraad-onpartijdigheid-van-de-rechter.aspx
[28] http://www.rechtspraak.nl/Procedures/Landelijke-regelingen/Algemeen/Documents/Leidraad-nevenfuncties.pdf
[29] Judicial Personnel refers to, in the application of the Code of Conduct, the judges, court officials and all other personnel employed by the judiciary. It is available on the public website of the Judiciary:

document composed of eleven recommendations, organised around three main principles – impartiality-independence, incorruptibility and professionalism. The NVvR also adopted on 26 September 2011 its own code of conduct for judges[30] which is more detailed.

91. Integrity has been chosen as a core value in the Agenda of the Judiciary 2011–2014. In order to implement the Agenda, a comprehensive integrity programme is to be carried out in 2012-2013. This programme, led by the Council for the Judiciary and a project coordinator for integrity in the judiciary, aims at: a) enhancing uniformity of the rules and policies governing the judiciary; b) inventorying and addressing any gaps; c) enhancing awareness of judges and court personnel for integrity and d) communicating these efforts to the public, in order to increase confidence in the judiciary. A comprehensive Integrity Handbook, gathering all relevant international and national texts, was published online in December 2012 and an interactive website was opened, where judges may discuss integrity dilemmas and raise questions. Discussions about integrity will also be promoted between colleagues at the level of each court. The GET welcomes this proactive policy, which it learned has been developed in response to isolated incidents and increasing questions from the public about the impartiality of judges. While the public still shows a high level of trust in the judiciary, the GET agrees with the judges' governing bodies that it is important not to take this trust for granted and to keep a constant focus on integrity issues.

Conflicts of interest

92. There is no general definition of conflicts of interest in the legal texts on the judiciary. The prevention of conflicts of interest is dealt with through the statutory rules on incompatibilities, ancillary functions and recusal (see below), as well as through the above mentioned guidelines and codes of conduct. Another means of prevention that is used is training on actual examples of conflicts of interest.

Prohibition or restriction of certain activities

Incompatibilities, accessory activities, post-employment restrictions

93. In the Netherlands, the issue of incompatibilities and accessory activities is considered on the premise that judges need to be fully integrated in society, to avoid being isolated in an "ivory tower". Therefore, holding one or more ancillary positions is considered to be a useful addition to the judicial office.

94. There are thus few rules on incompatibilities. Judges – with the exception of substitute judges, who exercise judicial duties on a part-time basis, while keeping their primary occupation – may not be lawyers or notaries and may not engage into providing legal assistance on a professional basis (article 44 of the Law on the legal position of judicial officials).

95. The following positions are incompatible with the office of member of the Council of State (article 5 of the Law on the Council of State):a) public position to which a regular remuneration or allowance is attached; b) membership in elected public bodies; c) office or profession of lawyer, notary, accountant, tax consultant or authorised agent; d) positions that are undesirable with a view to a proper performance of the office or the maintenance of impartiality and independence of the confidence therein. The position of extraordinary councillor of state is incompatible with any position, the exercise of which is undesirable with a view to a proper performance of the office or the maintenance of impartiality and independence or of confidence therein (article 10, paragraph 3 of the Law on the Council of State).

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http://www.rechtspraak.nl/Procedures/Landelijke-regelingen/Algemeen/Documents/Gedragscode-Rechtspraak.pdf

[30] http://www.nvvr.org/view.php?Pagina_Id=50

96. Unlike the office of vice-president and member of the Council of State, there is no legal incompatibility between the position of judge – except for judges of the Supreme Court (article 57 of the Constitution) – and that of Member of either Chamber of Parliament. The GET learned that in practice, judges elected to the House of Representatives were put on special leave for the duration of their term. The situation was less clear for Members of the Senate, as it is a part-time occupation. Until recently, there were some cases of members of the Senate still retaining their function of judge or substitute judge. The Guidelines on Ancillary Positions for Judicial Officers and Court Officials do contain a recommendation stressing that it is inadvisable for judges to be at the same time members of either Chamber of Parliament. The reasoning given in the commentary to this recommendation is that, as the law forbids some judges from being members of Parliament, all judges should by extension be likewise discouraged. The GET agrees with this reasoning and also stresses that the current lack of legal prohibition raises questions from the point of view of separation of powers and regarding the necessary independence and impartiality of the judiciary. Even though the Guidelines seem to have put an end in practice to problematic cases – in the current legislature, the senators who are also judges or substitute judges are on leave from their judicial office[31] – it cannot be excluded that such cases may occur again in the future. **GRECO recommends that a restriction on the simultaneous holding of the office of judge and that of member of either Chamber of Parliament be laid down in law.**

97. The legal and regulatory framework concerning <u>accessory activities</u> reflects that, as explained above, they are generally welcomed. There are few limitations and the accent is put instead on transparency. Judges are required by law to notify the board of the court of other positions they hold outside their office. This notification is to take place as soon as the intention to hold that position arises. The board of the court maintains a register containing the positions held by the judges of the court. This register is available for inspection at the relevant court (article 44 of the Law on the legal position of judicial officials) and is made public on the judiciary's website[32]. It is updated on a yearly basis, the boards of the courts being responsible for ensuring that the data concerning the judges of that court are accurate.

98. Following a study of the Research and Documentation Centre of the Ministry of Security and Justice on accessory activities and the impartiality of judges, existing statutory provisions concerning accessory functions were strengthened in May 2012 and entered into force on 1 January 2013, in order to increase confidence in the independence, impartiality and integrity of the judiciary. Important additions include:

- the provision that a lawyer may not be active as a substitute judge at a court where he is also registered as a lawyer ;
- the provision that a person employed by the prosecution service may not be active as a substitute judge, unless s/he is on special leave ;
- an obligation for judges and judges in training to include in the notification a short description of the accessory activity, the name and location of the company or institute where it is carried out, the time of commencement and end of the activity, the time spent working in ancillary positions in hours per month, whether it is remunerated or not and, if it is remunerated, the range of monthly remuneration perceived (less than €5,000 gross – between €5,000 and €10,000 gross – more than €10,000 gross), as well as the amount of annual remuneration perceived. The obligation to declare the working time and income does not apply to substitute judges as regards their main activity;
- rules according to which information about accessory activities is to be made public.

[31] In 2012, the Council for the Judiciary investigated all known cases of (former) judges and substitute judges being Member of Parliament and established that: (1) judges were either on leave from their judicial office during their term of office in Parliament or had been dismissed on their own request and (2) substitute judges were either not being asked to fulfil any judicial duties in court during their term of office in Parliament or were already retired.

[32] http://namenlijst.rechtspraak.nl/

99. In addition to these statutory provisions, the appropriateness of accessory activities in specific cases is to be assessed according to the Guidelines on Ancillary Positions for Judicial Officers and Court Officials. These guidelines contain eleven recommendations, such as the inadvisability for judges to act as paid legal advisors or to hold commercial positions – at least for permanent judges. Recommendations also concern the avoidance of possible influence of ancillary positions in court cases and their impact on the judge's performance. The guidelines are meant to serve as a tool for judges themselves, boards of the courts and parties to cases, who may wish to challenge the involvement of a judge in a given case.

100. The findings of the media about the register of ancillary activities also showed that several of the incomplete declarations concerned substitute judges. The GET discussed at length their situation during the on-site visit and learned that courts in the Netherlands rely significantly on substitute judges for reasons of flexibility and technical expertise. Their number is even greater than that of judges, even if some are registered with a court but are no longer active. Many of them are lawyers or law professors. Several of the GET's interlocutors stressed that the above-mentioned regulations and guidelines applied equally to substitute judges. The recently introduced prohibition for lawyers to be substitute judges in the same jurisdiction as the one in which they are registered was also mentioned and the GET noted that some courts have adopted guidelines on substitute judges[33] or organise regular integrity-related discussions as part of their management policy. Yet, aside from these initiatives, little specific attention seems to be paid to the particular position of substitute judges and to the fact that they are potentially more at risk regarding conflicts of interests or perceived lack of impartiality. The GET is also aware of a recent case in which a court decision in tax matters raised doubts because of the previously expressed views of one of the substitute judges, in her main capacity as tax law professor. A discussion followed in the media and the House of Representatives about the role of substitute judges and the possibility that they may in some cases influence case-law. In view of the above, **GRECO recommends that regulations, guidelines and policies be reviewed to ensure that substitute judges have appropriate standards and guidance on conflicts of interest and other integrity-related matters.** The GET noted with interest that, in connection with the preparation of this report, the Council for the Judiciary has been organising consultations on several issues raised by the evaluation and that substitute judges have indeed expressed their interest for more guidance on integrity issues.

101. There are no statutory rules or guidelines regarding post-employment restrictions for judges. The GET did not find this a particular source of concern, as judges generally leave judicial service upon reaching retirement age.

Challenge and withdrawal

102. The Code of Civil Procedure, the Code of Criminal Procedure and the General Administrative Code provide for a similar regulation for challenging judges (articles 512-518 of the Code of Criminal Procedure, articles 36-41 of the Code of Civil Procedure and articles 8:15-8:20 of the General Administrative Code). Every judge's handling of a case can be challenged at the request of either of the parties (and in criminal proceedings also by the public prosecutor) on the basis of facts and circumstances that could prejudice his/her impartiality. In this connection, the parties are able to consult the online public register for ancillary functions (see paragraph 114). Several measures also ensure that the names of the judge(s) handling a case are known in due time before any public hearing. Judges may submit a request to withdraw themselves for the same reasons. Challenges and requests for withdrawal are handled by a three-judge division within the court.

[33] See for instance http://www.rechtspraak.nl/Organisatie/Gerechtshoven/Den-Haag/Nieuws/Documents/plvv-protocol%2023-03-2012.pdf

103. The Judicial Impartiality Guidelines contain several recommendations on reasons why judges should not deal with certain cases, namely those involving their family, relatives or acquaintances, their accessory activities or those of their relatives, their former employment or their previous involvement in a case or with the parties to a case.

104. The GET learned that in practice, withdrawal of judges mainly happened in an informal manner, without resorting to the procedure described above. A judge aware of reasons for which his/her impartiality might be questioned simply asked one of his/her colleagues to take over the case. This informal practice makes it impossible to know the number of cases in which judges withdraw from a case. Some of the GET's interlocutors estimated that there were a few hundred cases a year, to be compared to a total number of court cases of 1.8 million[34]. The GET notes that the new Case Allocation Code referred to above contains a recommendation advising judges not to proceed informally anymore and, instead, to refer the case back to the board of the court for reallocation. It welcomes this principle, in the interests of transparency and to dispel any concern about possible undue influence of individual judges on the reallocation of cases.

105. The number of challenges by parties to a case has increased significantly in recent years[35]. The authorities attribute this increase in part to a case that received much public attention in 2011, in which a decision of the panel of judges hearing a challenge request was broadcast live for the first time. This is said to have drawn the attention of the public to the possibility of challenging a judge. Research commissioned by the Council for the Judiciary on the extent and causes of this phenomenon also showed that only a very small portion of these challenges – around 5% – were successful. Some concerns emerged that the challenge procedure might be abused in some cases to gain time in proceedings. In view of the possible negative impact of the (mis)use of the right to challenge a judge on the length of judicial proceedings, the Council for the Judiciary launched in 2012 a modernisation process of the challenge procedure.

Gifts

106. A prohibition on accepting gifts by judges has been laid down in article 364 of the Criminal Code as an offence involving the abuse of office, entailing the highest of the penalties for corruption offences. The article reads as follows:

a. Judges who accept gifts, promises or services, knowing or reasonably suspecting that these were made or offered in order to exercise influence on the decision in a case subject to their judgment will be punished with a term of imprisonment of at most nine years or a fine of the fifth category (= € 78,000).
b. Judges who request gifts, promises or services in order to exercise influence on the decision in a case subject to their judgment will be punished with a term of imprisonment of at most nine years or a fine of the fifth category (= € 78,000).
c. If the gift, promise or service is accepted knowing or reasonably suspecting that it was made or offered in order to secure a conviction in a criminal case, the judge will be punished with a term of imprisonment of at most twelve years or a fine of the fifth category (= € 78,000).
d. If the gift, promise or service is requested in order to secure a conviction in a criminal case, the judge will be punished with a term of imprisonment of at most twelve years or a fine of the fifth category (= € 78,000).

107. The Code of Conduct for judicial personnel reiterates that judges and employees of the judiciary may not accept gifts from parties to the proceedings, nor from other

[34] According to the 2011 Annual Report of the Judiciary.
[35] From 248 in 2007 to 557 in 2011.

interested parties. The GET was not made aware of any problems in the implementation of these rules. It is quite clear for judges that gifts are not acceptable.

Contacts with third parties outside court proceedings

108. Judges are not allowed in any way to be in contact with the parties, their lawyers or authorised representatives concerning any cases pending before them or concerning cases in respect of which they know or suspect that these will be brought before them (Article 12 of the Law on the organisation of the judiciary). This provision has also been included in the oath that judges have to take immediately upon appointment to an office, prior to the date of entering employment (Article 5g of the Law on the legal position of judicial officials).

109. If a judge violates this prohibition, the president of the court can issue a written warning (Article 46c, first paragraph, at b, Law on the legal position of judicial officials). Disciplinary dismissal by the Supreme Court may follow a second, similar violation (Article 46c, third paragraph, Law on the legal position of judicial officials).

Misuse of confidential information

110. Judges are bound by confidentiality regarding matters that have been expressed in court chambers in pending cases. Judges are also obliged to observe confidentiality with respect to the data that come into their possession in the exercise of their duties and which they know or should reasonably suspect to be confidential, unless any statutory provision obliges them to disclose or the need to disclose arises from their office (Article 13, Law on the organisation of the judiciary). This latter provision has also been included in the oath taken by judges upon entering office (Article 5g of the Law on the legal position of judicial officials).

111. Besides leading to criminal proceedings, violation of confidentiality rules might lead to disciplinary sanctions similar to the ones foreseen for the violation of prohibition of contacts with parties (see above).

<u>Declaration of assets, income, liabilities and interests</u>

112. Until recently, judges were not subject to any obligation to declare their assets, income, liability and interests. Since the beginning of 2013, further to the reform of the statutory rules on accessory activities, judges – with the exception of substitute judges – have to notify the board of the court of the yearly amount of compensation received for any accessory activity exercised. This information is to be stored in the register of ancillary positions and kept until three years after the end of the accessory activity. The fact that an ancillary activity is remunerated is disclosed to the public, but not the amount of the compensation received. Taking into account the overall high standards of integrity and accountability of the Dutch judiciary (in this connection see also paragraphs 14, 91 and 125) and the absence of any indication of corruption or undue influence on judicial decisions, the GET has no reason to believe that the absence of a general asset declaration system for judges is detrimental to the prevention of corruption in the judiciary.

113. The GET noted, however, that prosecutors, who are subject to a similar legal regime, are currently considering the introduction of a regulation to prevent the use of insider knowledge (see paragraph 174). This regulation would oblige certain categories of personnel, who are considered especially at risk in view of the information to which they have access by virtue of their position, to communicate to their management their investments in financial instruments. The GET sees merit in this targeted policy of declaration of interests for a limited number of professionals who have access to financial information that may put them at higher risk for possible conflicts of interest. The Dutch

judicial authorities might wish to examine the opportunity of introducing a similar targeted policy for certain judges who have access to insider knowledge.

Supervision, enforcement measures and immunity

114. As explained above, the only declaration duty applicable to judges concerns accessory activities. Each court is responsible for the accuracy of the information contained in the register on ancillary positions, which is available online for public consultation and has to be updated on a yearly basis. It would seem, however, that there has been until recently little verification by the courts of the information supplied by judges on their accessory activities. After consultation of the online register, the media revealed in 2011 that the notification duties were not duly followed by all judges and that several accessory activities had not been declared. In a statement issued in February 2013[36], the acting head of the Council for the Judiciary recognised that by that date, there were still some gaps in the ancillary positions registry. He attributed these gaps to oversight, rather than to a conscious avoidance by some judges of their legal obligations. He requested the courts to remind judges of their new legal obligations and to verify compliance. He added that the Council for the Judiciary would see to it that the situation would be corrected soon[37]. The GET takes this reaction as a positive step, but wishes to stress the importance of a full implementation and monitoring of the rules regarding accessory activities, in order to maintain the high reputation of the judiciary and to dispel any concerns among the public about the impartiality of judges.

115. As regards compliance with other rules, judges are subject to strict internal accountability through the complaints procedures and the Protocol for the investigation of integrity violations.

116. According to the Law on the organisation of the justice system, two separate complaints procedures are available to citizens. The internal complaints procedure concerns cases in which a person considers that s/he has been mistreated by a court of a member of its staff, including a judge; such complaints are dealt with by the board of the court. The external complaints procedure concerns specifically the conduct of a judge and is to be submitted to the Procurator General at the Supreme Court, who may request the Court to order an investigation into the judge's conduct. The Procurator General may also submit such a request ex officio. The external complaint procedure may only be introduced after an internal complaint has been rejected by the court in which the judge works. Courts, including the Supreme Court, have had to establish a procedure for handling complaints and publish it on their website. These are based on a model complaints procedure of 2002 and are approved by the Council for the Judiciary. Consequently, there is a degree of variation between the concrete procedures at the level of the courts. The complaints procedures may not concern the substance of a case or a court decision. The GET understood that the Council for the Judiciary and the meeting of presidents have been looking into possibilities to improve the complaints procedures and make them less formal, more uniform and more transparent. The new arrangements, which include an anonymous publication of all complaints on the judiciary's website, will enter into force in 2013.

117. The Council for the Judiciary is also drawing up a Protocol for the investigation of integrity violations by judges. Reports that may give rise to suspicions of an integrity violation may come from different sources, such as a police report, notification of a preliminary judicial investigation, a report by the judge him/herself, evaluation interviews with him/her, observation by a manager or colleague, complaint by a citizen or a media report. Until now, each court has dealt with such suspicions in its own way.

[36] http://www.rechtspraak.nl/Actualiteiten/Nieuws/Pages/RvdR-Registratie-nevenfuncties-moet-snel-op-orde.aspx
[37] In a statement released in March 2013 (http://www.rechtspraak.nl/Actualiteiten/Nieuws/Pages/Registratie-nevenfuncties-van-rechters-op-orde.aspx), the Council for the Judiciary confirmed that inaccuracies in the register had been corrected.

The GET supports the adoption of a unified protocol for investigating integrity violations which would improve the transparency, foreseeability and objectivity of this procedure.

118. Disciplinary sanctions applicable to judges are the following; a) written warning in case of neglecting the dignity of office, official tasks or duties; b) suspension in case a judge is in custody for a criminal offence pending possible dismissal; c) dismissal in case of a second violation of the same rule for the breach of which a written warning has already been given. The sanction of written warning can be given by the president of the court. Just as dismissal, suspension is a prerogative of the Supreme Court, upon request of the Procurator General of the Supreme Court.

119. The judge involved is invited to present his/her views orally or in writing to the president of the court or the Procurator General. The Supreme Court's examination takes place in chambers. The judge involved may be invited to attend and present his/her opinion. The Supreme Court may, at the request of the Procurator General, the judge, or ex officio, call and hear witnesses. It then issues a substantiated ruling, which is pronounced in public.

120. At the initiative of the Council for the Judiciary, the government intends to expand the range of disciplinary sanctions in order to be able to provide a more graduated response to the various forms of undesirable or inappropriate conduct of judges. Cases in which a written reprimand and a suspension can be imposed will be expanded. Additional sanctions of withholding remuneration for a specific term in cases in which judges intentionally fail to perform their duties and transfer to another court in other cases than those involving unsuitability due to illness (for example if the working relationship is damaged) are being considered. In cases in which it is important to promptly dismiss a judge and the Supreme Court has not yet decided on the matter, another court will be able to take this decision if the Supreme Court is simultaneously asked to suspend the judge. This package has been laid down in a bill, which is undergoing consultation in the spring of 2013. It is expected to enter into force in 2014.

121. Judges do not enjoy any immunity. The criminal procedure is the same for judges as for all citizens and is implemented in accordance with the Code of Criminal Procedure. The Criminal Code, including the provisions concerning offences involving abuse of office, applies equally to judges.

122. Statistics regarding disciplinary sanctions against judges were published for the first time in the 2011 Annual Report of the Judiciary:

- 1 written warning for neglecting the dignity of the office and for violation of the prohibition to consort with parties or their lawyers,
- 1 written warning for violation of the confidentiality,
- 1 dismissal upon request (early retirement) for a work-related integrity issue.

123. According to the authorities, 1412 internal complaints were submitted to the courts in 2011. This number does not concern specifically alleged misconducts of judges, but also encompasses complaints about other court staff or the organisation of the court in general. Almost half of the complaints were not handled because they concerned a judicial decision. The percentage of well-founded complaints was approximately 19%.

124. The Annual Report of the Supreme Court for the year 2011 showed that 13 external complaints had been submitted against judges. Nine of them were rejected because they concerned a judicial decision and another one for irrelevance. In one case, the citizen had not first submitted an internal complaint. The two remaining cases are currently under investigation. They do not concern integrity issues, but communication around judicial decisions.

125. The GET takes the view that the rules and mechanisms pertaining to the accountability of judges are well construed and appear to operate effectively, even if

statistics on disciplinary decisions could have been made public much earlier than in 2011. All interlocutors – both from within and outside the judiciary – stressed that ethical and integrity standards within the judiciary are very high and that judges enjoy a high level of confidence in society, a positive assessment with which the GET concurs. Incidents do sometimes happen, but they seem to be adequately dealt with by the existing rules and procedures and they receive wide coverage in the media. Such a case which has recently been receiving much media attention was discussed during the on-site visit. It concerned allegations by a former court clerk that a judge had, upon request of another retired judge with whom he was acquainted, rendered a decision in favour of one of the parties in a construction development case. The defendants were acquitted in first instance and the case is currently pending before a court of appeal[38]. The allegations also contained elements of forgery and conflicts of interest, but they were time-barred or inconclusive.

Advice, training and awareness

126. Integrity, impartiality and independence form part of the subjects addressed during the initial and in-service training of judges. The training institute (*Stichting Studiecentrum Rechtspleging*, herafter SSR), which functions under the auspices of the Council for the Judiciary, offers courses, such as "practical professional ethics for judges" and "judicial formation of opinion", that aim to increase the moral competencies (integrity, impartiality and independence) of the judges. The Council for the Judiciary and the SSR also organised joint training sessions for all court employees on the topic of "handling moral dilemmas". Judges have to attend a minimum of 30 training hours per year, on the topics of their choice.

127. Some courts – they were eight at the time of the on-site visit – have integrity commissions, the objective of which is to promote integrity, provide advice to judges, court staff and the board of the court in case of integrity-related dilemmas, and bring coherence to the court's integrity policy. Their composition and operation modalities vary among courts, but in general, they are composed of judges, other court personnel and sometimes human resources staff. In October 2012, all courts decided to establish integrity commissions.

128. It was also mentioned to the GET that integrity is sometimes discussed on the occasion of judges' appraisal and through intervision, which is a yearly peer-review mechanism among judges who work in different sections within the same court. They follow each other's work in order to provide constructive criticism and suggestions on their behaviour at the workplace.

129. In the framework of the current integrity programme, the Council for the Judiciary and the national project coordinator intend to enhance the focus put on integrity at all levels within the judiciary. In addition to the measures mentioned earlier in this report, all courts have been asked to appoint integrity commissions. Discussions about integrity are promoted, online via a protected website and forum and within the courts, among colleagues. The training policy will also be updated and integrity will be woven through other existing training topics, such as criminal law or civil law, again with the aim of creating a habit of discussing integrity-related issues. The GET strongly supports this policy, in the light of comments heard during the visit about the fact that integrity was sometimes taken for granted and that it was difficult for some judges to talk openly about ethical dilemmas and challenges.

[38] http://www.nrc.nl/nieuws/2012/12/05/om-in-hoger-beroep-tegen-vrijspraak-kalbfleisch-en-westenberg/

V. CORRUPTION PREVENTION IN RESPECT OF PROSECUTORS

Overview of the prosecution service

Structure of the prosecution service

130. The structure and the authorities of the Dutch prosecution service (*Openbaar Ministerie*, hereafter OM) are regulated by the Law on the organisation of the judiciary. The legal status of prosecutors is regulated by the Law on the legal position of judicial officers, which makes a distinction between adjudicating judicial officers (judges), and other judicial officers. Prosecutors belong to the latter category. The OM and its members belong accordingly to the judicial branch, but the prosecution service as a whole is subordinated to the authority of the Board of Procurators General and to the political responsibility of the Minister of Justice and Security.

131. The main role of the OM is to prosecute offenders. It has the authority to decide whether or not a criminal case should be brought to court, in line with the principle of opportunity. The OM also supervises the criminal investigation leading up to either a trial or a dismissal, and monitors the proper execution of any sentence imposed by a judge. These functions of the OM are fulfilled by public prosecutors in first instance courts and by advocate generals in the appeal courts.

132. The OM of the Netherlands is composed of five branches[39]:

- The prosecution service head office (*Parket-Generaal*) in The Hague, which is the seat of the Board of Procurators General, the governing body of the OM;
- The prosecution offices (*parketten*) attached to the district courts and courts of appeal, headed by Chief District Prosecutors and Chief Advocates-General, respectively;
- Two specialist offices: the National Prosecution Office for Serious (organised) Crime in Rotterdam (with offices in Den Bosch, Zwolle and Schiphol), which works on serious organised crime (international investigations) and the Functional Prosecution Office in The Hague (with offices in Amsterdam, Rotterdam, Den Bosch and Zwolle), which prosecutes criminal offences investigated by the four special investigative agencies under the control of governmental departments, namely fiscal, economic and fraud crimes, social security crimes, health crimes and environmental crimes;
- The Prosecution Service Shared Service Centre (DVOM) that provides nationwide IT, housing and facility support services for the Prosecution Service; and
- The Prosecution Service Central Processing Division (CVOM) that processes certain standardised cases on a national level, in particular road traffic cases.

133. General policies regarding prosecution are determined by the Board of Procurators General through the development of directives and policy guidelines. The Board also supervises the implementation of the prosecution policy by the OM. It is composed of three to five procurators general – there are currently four members – one of whom is appointed as chairperson by Royal Decree, for a term of not more than three years which can be renewed once (article 130/3, Law on the organisation of the judiciary). The Board of Procurators General may issue directives concerning the execution of the tasks and responsibilities of the OM (article 130/4, Law on the organisation of the judiciary). The directives may concern the dismissal, continuation, adjournment or suspension of criminal prosecution, inadmissibility or judicial non-competence in individual cases. The Board of Procurators General is accountable to the

[39] There is no hierarchical subordination between the different branches of the OM. All are subordinated to the Board of Procurators General.

Minister of Security and Justice for these policy guidelines and directives, and s/he may give directives to the Board. The Board and the Minister meet on a regular basis.

134. The Procurator General, attached to the Supreme Court, used to be part of the OM. Following a reorganisation of the prosecution service in 1999, the Procurator General, the Deputy Procurator General and the Advocates General at the Supreme Court have been detached from the OM, although certain relations remain. If the Procurator General believes that the OM is not upholding or executing the laws and regulations as it should, s/he can inform the Minister of Security and Justice. The Board of Procurators General is obliged to give information and render assistance to the Procurator General. The authority of the Minister of Security and Justice to give instructions (see below) to the Procurator General, the deputy prosecutor general and the advocates general was also repealed during the above-mentioned reorganisation of the prosecution service.

Role of the Minister of Security and Justice

135. The Minister of Security and Justice is politically responsible for the actions of the OM and may be called upon to render account to both Houses of Parliament. As a consequence of this political responsibility, s/he can give both general and specific instructions to the OM (article 127, Law on the organisation of the judiciary). However, the authorities of the Netherlands specify that these have to be seen as an exception to the rule that the OM is responsible for developing its own policies. They add that with respect to individual cases, the Minister has to exercise restraint in light of the special position of public prosecutors in criminal proceedings. Before issuing a directive in an individual case, the Minister has to consult the Board of Procurators General. Directives are always given and motivated in writing (article 128, Law on the organisation of the judiciary). In case the Minister gives an instruction not to prosecute an individual case or to suspend prosecution, both Chambers of Parliament have to be informed and a debate follows (article 128/6, Law on the organisation of the judiciary).

136. The right of the Minister of Security and Justice to give instructions in individual cases was discussed at some length during the on-site visit. The authorities explained that this right stems from the fact that the Parliament increasingly wishes to discuss investigations and prosecution in some sensitive cases and that the Minister needs to be properly informed of such cases, in order to exercise his/her responsibility. In this connection, a Manual for sensitive cases, adopted on 6 August 2007 by the Board of Procurators General, contains guidelines on how prosecutors are to recognise and handle such cases. There is no exhaustive list of sensitive cases, but in general, they may be cases having caused public commotion on a national scale, cases involving a well-known person or a person who occupies a special position in view of his/her profession or cases where national coordination may be necessary. Such cases are to be handled with extra care, under the supervision of the head of office, and the Board of Procurators General has to be informed. In turn, the Board determines whether the Minister of Security and Justice needs to be alerted about the case, in order for him/her to decide whether to give an instruction. An update of the Manual is currently under preparation.

137. The authorities stressed that the Minister's right of instruction is always subject to control by other authorities, namely the courts when an instruction to prosecute is given and the Parliament when an instruction is given to suspend prosecution or abstain from prosecuting. According to all interlocutors met by the GET, the right of the Minister to use instructions in individual cases is used very sparingly in practice. The GET was told that the Minister had never used his/her right to suspend prosecution or abstain from it since the entry into force of the Law on the organisation of the judiciary in 1999. Most cases are discussed on the occasion of the regular meetings between the Minister and the Board of Procurators General, and an instruction by the Board ensues if necessary. An example was given to the GET of a recent very high profile case involving the possible prosecution of an MP for alleged discrimination and promotion of hatred. There was

disagreement among the members of the Board and the Minister on the decision to prosecute the MP, the Minister being reportedly in favour of prosecution and the chairman of the Board against it[40]. The decision was taken not to prosecute. This decision was then appealed by interested parties according to article 12 of the Code of Criminal Procedure and the Court of Appeal ordered the OM to prosecute the MP.

138. The GET recalls that it is crucial for public confidence that prosecution is, and appears to be, impartial and free of any improper influence, particularly of a political nature. Recommendation Rec(2000) 19 of the Committee of Ministers to member states on the role of public prosecution in the criminal justice system stresses that instructions of the government to prosecute in a specific case must carry with them adequate guarantees of transparency and equity. Instructions not to prosecute are to remain exceptional and subject to an appropriate specific control, in order in particular to guarantee transparency. In the light of the above explanations, the GET is satisfied that the guarantees surrounding the use by the Minister of Security and Justice of the right of instruction in specific cases do not appear to be at variance with the requirements of Recommendation Rec(2000) 19.

The Prosecution Service Integrity Bureau (BI-OM)

139. A Prosecution Service Integrity Bureau (BI-OM) was recently established and has been operational since the middle of 2012. A national programme manager for integrity matters and an integrity coordinator were also appointed. They form part of the BI-OM, together with specialists from human resources, communication, the Employment Law Expertise Centre and the National Police Internal Investigations Department. The BI-OM acts as a nationwide centre of expertise concerning consultation, promotion and management of integrity issues within the prosecution service. The establishment of the BI-OM and the appointment of the national programme manager and the coordinator for integrity matters are examples of the important efforts carried out over the past two years by the Dutch authorities to foster and develop a climate of awareness to integrity within the prosecution service. The Board of Procurators General considers integrity as an essential hallmark of the quality of the OM, and one that must be visible and recognisable, both internally and externally. The different elements of this integrity policy and the activities of the BI-OM will be presented in more detail further in this report. This policy is co-ordinated by an Integrity Working Group, chaired by the national integrity programme manager.

Recruitment, career and conditions of service

140. The recruitment, career and conditions of service of prosecutors are governed by the Law on the legal position of judicial officials and the Regulation on the legal position of judicial officials. The rules are therefore similar to those governing judges. Contrary to judges, however, prosecutors are not formally appointed for life. After a one to three year probationary period, they are appointed for an indefinite term, until the legal retirement age of 65 which, upon request, may be extended until 70 under certain circumstances. Senior prosecutors, including the Procurator General and the chief district prosecutors are formally appointed by the Crown following the recommendation of the Minister of Security and Justice, whereas junior prosecutors are formally appointed by the Minister of Security and Justice.

141. There are several ways for the candidates to become eligible for appointment as prosecutor. Firstly, candidates who successfully complete the "Raio" judicial officer training (see paragraphs 74-75), which is run together by the OM and the Council for the Judiciary, may be appointed as substitute prosecutors. After having worked three years as an acting or substitute prosecutor, candidates will be appointed as prosecutors,

40 http://www.volkskrant.nl/vk/nl/3844/Het-proces-Wilders/article/detail/3072231/2011/12/10/Top-justitie-ruziede-over-vervolging-Wilders.dhtml

provided they receive a positive appraisal from the chief district prosecutor. Secondly, internal candidates, such as those employed as a senior legal secretary with either the OM or the courts, legal secretaries, advisors or policy development specialists, may apply for the position of (acting) prosecutor for trials presided over by a single judge. Thirdly, external candidates who have completed a master-level education in Dutch law and who have at least six years of experience in the legal profession may be appointed as prosecutors. As explained above in relation to judges, the educational programme for prosecutors is currently being redesigned. The new programme will replace the existing education and training programmes for recently graduated candidates and legal professionals with experience. Some elements, which will remain part of the new programme, are the focus on ethics, attitudes and skills in the profession of prosecutors, as well as mutual learning experiences between prosecutors and judges, through exchange programmes and joint courses.

142. The selection of candidates takes place according to a process comprising up to six steps:

- online application for a position by the candidates;
- selection of applications by a selection committee of three persons, which checks whether candidates fulfil formal criteria and assesses their social experience and motivation;
- pre-selection interviews (only for experienced external candidates) by a senior public prosecutor and a senior human resources advisor;
- psychological assessment by a consulting firm independent of the prosecution service, to ensure that the applicant is able to analyse and assess complex issues quickly and thoroughly;
- interview with the selection committee, to assess each candidate's suitability for a position of prosecutor;
- final "fitting-in" interview with the head of the department where the vacant position is available.

143. The selection committee consists of a pool of 21 members appointed by the Board of Procurators General. Most of them hold a key position within the prosecution service. To qualify for such key positions, they have to pass a very strict selection and internal screening procedure. Most of the members of the selection committee hold confidential positions (see below) and as such have undergone a security screening procedure. The selection committee also includes two external members, a lawyer and a professor of legal psychology.

144. In the framework of the above-mentioned integrity policy, greater attention is paid, during the selection process, to the integrity of candidates. This assessment takes place in particular through interviews, during which qualities such as sensitivity, societal awareness and openness to criticism are tested. In 2013, the BI-OM will organise for a group of human resources advisers a workshop on pre-employment screening, in which they will learn more about testing the integrity of candidates and methods of screening and calculating integrity risks. Furthermore, a guide on integrity during personnel interviews was adopted by the BI-OM on 26 October 2012, to be used for all (prospective) staff interviews, especially for appraisal or promotion.

145. Moreover, the selection committee for prosecutors is authorised to consult the judicial file of a candidate, as candidates who have committed a punishable act are deemed unfit to be selected as judicial officers. According to proposed legislation, a statement of good conduct would in the future be requested from the Ministry of Security and Justice, as is already the case for civil servants working in the prosecution service. At the time of the on-site visit, discussions were being held between the OM and the Ministry of Justice to explore possibilities for widening the scope of the statement of good conduct, to include relevant police information, in addition to the judicial information which already forms part of the certificate. Other possible tools to enhance the integrity of vulnerable sectors are also being considered. It is expected that the Parliament will be

informed about the results of this study after the summer of 2013. The GET supports this idea.

146. Candidates to so-called "confidential positions" within the prosecution service are subject to a reinforced integrity check through a security screening procedure, performed by the General Intelligence and Security Service. Confidential positions are those that require the knowledge of state secrets, are of vital importance for maintaining social order and/or positions that require absolute integrity to safeguard national security. During this screening, several indicators are assessed such as addictions, financial vulnerability, unwelcome influences, as well as honesty, independence, loyalty and integrity. Family members and relatives of the prosecutors subject to this screening also come under scrutiny.

147. Horizontal and vertical mobility is possible within the OM. Horizontal transfers happen under the responsibility of the respective chief district prosecutors. The OM promotes job rotation once every four or five years. Vertical promotions are decided by the Board of Procurators General, upon recommendation of the respective chief district prosecutor. As on the occasion of the selection process, greater attention is now being given to the integrity of candidates, in particular during interviews. A Systematic Talent Development Programme has been implemented since 2006 at national level in order to identify promising employees and to develop and assess their competences with a view to a possible promotion to a key position within the OM. This national programme has been complemented with similar programmes at regional level.

148. The rules on dismissal are provided for in the Regulation on the legal position of judicial officials. Prosecutors will or can be dismissed on a number of grounds, such as their own request, illness, reasons for unsuitability, end of temporary appointment or as a disciplinary measure. In the case of involuntary dismissal, the power to dismiss is exercised by Royal Decree, upon recommendation by the Board of Procurators General (which acts upon mandate, on behalf of the Minister of Security and Justice). Appeal against dismissal decisions is possible before the Central Appeals Tribunal (for the public service and social security matters).

149. The remuneration for prosecutors is determined pursuant to the categories and tiers defined by the Law on the legal position of judicial officials. The gross monthly salary for a new entrant is between €4503 and €5461 per month – based on the individual contract negotiations – and the gross monthly salary for those at the highest level of the prosecution service is between €9253 and €9857. Like judges, prosecutors are provided with a holiday allowance and an annual end-of-year supplement. Under special circumstances, the employer can provide temporary accommodation to its employees. This privilege is primarily intended for the management of district offices of the OM and is decided upon by the Board of Procurators General.

Case management and procedure

150. Case assignment to prosecutors in first instance and in appeal is random but criteria such as experience, special expertise and/or regional jurisdiction are taken into consideration. For example, junior grade prosecutors are only assigned cases to be presided over by a single judge, unless monitored by a supervisor during a training period. More substantial cases are represented during trial by the prosecutor who has also been responsible for the criminal investigation phase.

151. In application of his/her power to issue general and specific instructions to officials employed at the public prosecutor's office concerning the performance of their duties (article 136, Law on the organisation of the judiciary), the chief public prosecutor may order the removal of a prosecutor from a particular case and the transfer to another prosecutor. The authorities indicate, however, that this is seldom necessary in practice.

152. The Code of Criminal Procedure comprises a number of safeguards to prevent undue delays in the instruction of cases, e.g. article 36 states that a criminal investigation by the prosecutor that has not been continued will stop the moment a defendant requests conclusion of the case by a judge; articles 167 and 242 require the completion of the subsequent criminal investigation as soon as possible; article 244 stipulates that a prosecutor is bound to actively continue the case within two months after concluding the initial judicial investigation, by either issuing a notification of prosecution or non-prosecution, a subpoena or a penalty decree and articles 64-66 foresee that a case is brought before a judge if the suspect is (still) remanded in custody within 104 days after the commencement of such custody.

153. Each office of the prosecution service has a press team, which handles communication about cases. It is composed of press officers and of "press prosecutors", who divide their time between prosecution work and contacts with the media about the office's cases. The GET's interlocutors highlighted the positive effect of press prosecutors on media reports about cases. They stressed that much of the discontent around the prosecution service stemmed from an incomprehension of the reasons behind decisions not to prosecute or to discontinue prosecution on individual cases. Press prosecutors, by discussing with their colleagues in charge of a case the reasons why some details should or should not be disclosed, were able to better inform the media and answer their questions in a more precise manner.

Ethical principles and rules of conduct

154. As far as statutory rules are concerned, the authorities explain that article 34a of the Regulation on the legal position of judicial officials is used to derive a behavioural standard for proper professional conduct of prosecutors. This article provides that "*a disciplinary measure may be imposed on a judicial officer who fails to comply with an obligation imposed on him or who is otherwise guilty of dereliction of duty. Dereliction of duty as referred to in the first paragraph comprises both the violation of any regulation as well as the performance or omission of that which a responsible judicial officer in similar circumstances should omit or should do*." Prosecutors are also bound to uphold the oath of office to which they are sworn which is to fulfil their duty befitting a good judicial officer.

155. Ethical principles and rules of conduct, however, are mostly contained in self-regulatory texts. The Public Prosecution Service Code of Conduct, first introduced in September 2006 and completely revised in 2012 in the framework of the above-mentioned integrity policy, describes the general guiding principles of conduct of all employees of the OM, including prosecutors. It was prepared by an internal working group, presided over by a Chief District Prosecutor, in cooperation with the Prosecution Service Bureau for Criminal Law Studies (WBOM) and the BI-OM and adopted by the Board of Procurators General. The Code contains five core values, namely professionalism, situational awareness, integrity, openness and meticulousness, which are explained and brought into context by a commentary. These core values, the Code explains, are meant to constitute a moral compass for employees of the OM to guide them in the large grey areas where integrity and professional ethics are not a matter of "good" or "bad". The Code points out that it is not intended as a closed and limited system of legal regulations, imposed by the management in a top-down manner. It is not related to the laws and regulations on prosecutors' duties, even if some of these duties are repeated as more abstract standards in the Code.

156. The Code also indicates that the five core values form the starting point for a permanent discussion within the OM about values that are perceived to be essential, as well as their implementation in daily practice. This importance of an on-going discussion about ethics and professional conduct was also repeatedly stressed to the GET during the on-site visit as an essential element of a sound integrity policy. Fostering this constant discussion within the OM constitutes the central element of a Framework Memorandum

on Integrity, adopted in May 2012 by the Board of Procurators General. This memorandum contains a strategy for enhancing integrity within the prosecution service, as well as concrete targets, activities – both of a preventive and repressive nature – and allocation of roles to achieve this end. Some of these activities, such as the increased focus placed on the integrity of candidates during selection, promotion, as well as professional appraisal interviews, were already mentioned. Others will be presented in more detail below. The GET very much values the thorough and well thought-out approach adopted by the prosecution service to raise integrity standards within the organisation and to safeguard public confidence. It welcomes, in particular, the objective of encouraging on-going discussions about integrity at the workplace, in order to avoid misconduct which is often the result of ignorance or lack of thought about the consequences of one's actions.

Conflicts of interest

157. There is no general definition of conflicts of interest in the legal texts concerning the prosecution service. It is, however, one of the forms of violation of integrity identified in, among others, the Framework Memorandum on Integrity, the Instruction concerning the management of integrity violations (see below) and the Public Prosecution Service Code of Conduct. Specific forms of conflicts of interest are also addressed in the regulations and guidelines regarding accessory activities, recusal, gifts and some earnings (see below). The GET was also informed during the on-site visit that the BI-OM was working on a list of vulnerable positions and processes within the prosecution service, that are at higher risk for integrity, with a view to clarifying the respective duties, powers and limits of the persons holding such positions or involved in such processes.

158. It has been stressed to the GET during the visit that the above-mentioned integrity policy – which aims at creating awareness among managers and staff concerning work-related integrity dilemmas, discussing these openly and providing solutions to them – also contributes to an internal corrective mechanism that identifies behaviour entailing conflicts of interest and risks of corruption. Action is taken to remedy such behaviour, preventively if possible and repressively if necessary. In case repressive action is taken, widespread internal – anonymised – publication of sanctions given, along with the misbehaviour, contribute to raising awareness and ensuring the transparency of the integrity policy. The GET welcomes this balanced approach to the issue of conflicts of interest and its focus on awareness and avoidance of possible conflicts. It believes that, in a country like the Netherlands, in which the judicial power wishes to be fully integrated in society and allows its members to take on additional activities and to hold outside interests, awareness and a flexible approach are key to ensuring that conflicts of interest are appropriately dealt with.

Prohibition or restriction of certain activities

Incompatibilities, accessory activities, post-employment restrictions

159. Prosecutors are subject to many of the same regulations and guidelines concerning the incompatibilities and accessory activities as those applicable to judges described above.

160. As for judges, there are few legal rules regarding incompatibilities. Prosecutors may not be lawyers or notaries, may not at the same time act as a substitute judge in a court and may not engage in the provision of legal assistance on a professional basis (article 44, Law on the legal position of judicial officials). Article 57 of the Constitution also sets out the incompatibility between the mandate of member of Parliament and that of Procurator General at the Supreme Court – it being recalled that the latter is not formally part of the OM anymore. Unlike judges, there is a legal incompatibility between position of member of Parliament and that of prosecutor, under article 2.d of the Law on

incompatibilities of the States General and the European Parliament. This article prescribes that officials working in a ministry and in their subordinate institutions, services and companies cannot, at the same time, be members of Parliament. The Dutch authorities confirmed to the GET that prosecutors fall under the scope of this provision.

161. Prosecutors are required by law to notify any accessory position to their hierarchy, (article 44, Law on the legal position of judicial officials). As from 2013, this declaration is to include the time devoted to these activities in hours per month, and the amount of the annual remuneration perceived (divided into different ranges). As from 2013, prosecutors are also required to report the fact that they do not hold any accessory position.

162. A circular letter of 22 April 2010 from the Board of Procurators General to all heads of units of the OM specifies that accessory positions include in any case:

- All remunerated posts and activities;
- All lectureships;
- Running a business;
- Seats on management boards, advisory committees, arbitration committees, disciplinary boards and grievance committees;
- Engaging in trade and commerce;
- Participation in contracting and delivery;
- Supervisory or executive directorship or partner in a partnership, foundation or association;
- Activities as a mediator, arbitrator or provider of binding advice.

163. A new testing standard for the assessment of accessory positions is also to be applied since 2013 by the competent authority, namely the chief district prosecutor: prosecutors cannot hold positions that are undesirable with a view to the proper performance of their office or the maintenance of impartiality and independence or the confidence therein. After approval, accessory activities are published in the register of ancillary positions that has to be published online (article 44a, Law on the legal position of judicial officials). During the last months of 2012, prosecutors have updated all information on their accessory activities. The information contained in the register was checked by the competent authority and has been published online since April 2013[41].

164. The Code of Conduct of the Prosecution Service also provides that "*members of the prosecution service will also act with the integrity required of them when not engaged in their professional duties, which in any case includes the avoidance of those acts or ancillary jobs that might compromise one's professional impartiality, or may be construed to do so*".

165. There is no restriction on post-employment for prosecutors. Nothing in the information gathered by the GET would indicate that this lack of rules is a source of concern, as prosecutors generally remain in the OM until they reach retirement age.

Challenge and withdrawal

166. The Code of Conduct of the Prosecution Service specifies that members of the service have to refrain from handling cases in which acquaintances, family or relatives are, or may be, involved. Each court also has a Protocol for lawsuits involving the court's own personnel, which also applies to prosecutors. According to these protocols, cases involving a prosecutor's relatives or close acquaintances have to be reported to his/her superior and are then allocated to another prosecutor's office.

[41] On http://www.om.nl/onderwerpen/nevenbetrekkingen-0/

Gifts

167. An explicit prohibition to accept gifts from parties to the proceedings is included both in the oath of office and in the Code of Conduct of the Prosecution Service. The Code also specifies that public prosecutors must comply with the civil service protocols regarding gifts, official trips, etc. The Civil Service Gift Acceptance Protocol, issued on 28 July 1999, is accordingly applicable to prosecutors. It limits the acceptance of gifts and services offered by any third parties to members of the OM to an equivalent value not exceeding €45, an amount which may be lowered by the competent Chief District Prosecutor. Gifts received at home are prohibited in all circumstances, as well as trips, excursions and meals paid by third parties.

168. Interviews held on-site clearly showed that the receipt of any gift is considered inappropriate. It is, however, not always possible to refuse them in practice. In such a case, the gift or any invitation must be reported by the prosecutor to his/her superior, who will decide on the appropriate course of action, depending on the circumstances.

Financial interests

169. Article 61a of the General Civil Service Regulations, which indirectly, through the Code of Conduct, applies to prosecutors, forbids civil servants from having financial interests, possessing securities or conducting transactions in securities through which the proper performance of their job or the proper functioning of the civil service would not reasonably be assured. Such interests, securities and transactions are subject to reporting and registration obligations (see below). Should the prosecutor's manager consider that declared interests involve a possible conflict of interest, could be construed as such, or entail a risk of improper use of sensitive information, s/he may instruct the prosecutor concerned to reduce or abandon those interests.

170. During the on-site visit, the GET also learned that a draft regulation to prevent the use of insiders' information was under discussion within the OM. This regulation would apply to certain staff members who are considered at higher risk because they have access to certain sensitive information in the course of their duties and are thus designated as "insiders" by the relevant officer in charge of compliance with the future regulation. Insiders would be subject to certain declaration requirements (see below) and prohibitions. They would not be allowed to own, directly or indirectly, or to conduct transactions in financial instruments, with the exception of collective investment schemes. The management of any shares other than in such collective schemes would have to be transferred or they would have to be sold, with the authorisation of the officer in charge of overseeing compliance with the regulation or of their manager. Insiders would continue to be submitted to the provisions of this regulation for a period of six months after they leave the insider position. The GET encourages this initiative, which represents a targeted approach towards specific risks of conflicts of interests and misuse of confidential information.

Contacts with third parties outside court proceedings, misuse of confidential information

171. The obligation to protect confidential information is stated in the oath of office, which is sworn by prosecutors when they take up their duty. It is recalled in the Prosecution Service Code of Conduct, which prohibits the divulgation of any information concerning a criminal case, including the disclosure of the fact that someone is under suspicion. More generally, it provides that prosecutors are to avoid all personal contacts, either professionally or privately, that might compromise the proper fulfilment in any way of their function. Additionally, the Code of Conduct concerning Information Security prohibits discussion of confidential information in public spaces and with third parties.

172. In addition to possible disciplinary sanctions, intentional breaches of confidentiality perpetrated during the course of one's professional occupation or duty, or

that follow from knowledge gained during a previous occupation, are punishable according to article 272 of the Criminal Code, by imprisonment of up to one year and/or a fine of the fourth category. Disclosing information labelled as a state secret, or which can be reasonably assumed to be labelled as such, is punishable by detention of not more than six years and/or a monetary fine of the fifth category (article 98 of the Criminal Code).

Declaration of assets, income, liabilities and interests

173. Prosecutors are subject to the same reporting requirements as judges regarding their accessory activities (see paragraphs 161-162). Since the beginning of 2013, the amount of compensation received, if any, is also to be indicated (divided into ranges). This information – with the exception of the amount of compensation received – is listed in the publicly available register of ancillary positions. The GET was informed that the Human Resources Department of the OM issues an annual reminder and that it is a recurring topic during annual appraisal interviews.

174. The above-mentioned draft regulation to prevent the use of insiders' information also foresees a number of reporting obligations. Persons covered by this regulation would have to report to their compliance officer any shares they have, other than shares in collective investment schemes. Every year, insiders would have to present to the compliance officer a declaration showing that they have acted in compliance with the regulation.

175. The GET was told that liabilities incurred by prosecutors may also come to the knowledge of their hierarchy in case they have been unable to honour them and their creditors have applied for an attachment of earnings. In such a case, the payroll department informs the Director of DVOM (the shared service unit of the prosecution service, see paragraph 132), who relays this information to the prosecution's district office to which the prosecutor is attached. The supervisory authority monitors the situation and the immediate superior and/or human resources advisor discusses the situation with the prosecutor if necessary. At the time of the on-site visit, this area was subject to policy development under the supervision of the BI-OM. A guideline on attachment of earnings and problematic debts was adopted by the BI-OM on 26 October 2012, to formalise reporting rules and follow-up and to better identify and prevent possible breaches of integrity.

176. In addition, debts incurred by prosecutors holding confidential positions (see paragraph 146) may lead to a renewed security screening. If this screening reveals insufficient guarantees regarding the prosecutor's ability to fulfil his/her duties under all circumstances, s/he may be relieved from his/her confidential position.

177. Taking these targeted measures into account, as well as the regular interviews of prosecutors with their managers (see below under supervision), the GET is of the opinion that the absence of a general asset declaration system for prosecutors is not detrimental to the prevention of corruption.

Supervision, enforcement measures and immunity

178. In line with the OM's general approach to dealing with integrity matters and conflicts of interest through prevention whenever possible, any suspicion concerning a conflict of interest leads to an interview with the concerned prosecutor's immediate superior. Should this interview reveal an imminent or actual conflict with the prosecutor's position, a course of action for its termination will be determined, preferably with the agreement of the prosecutor concerned, e.g. by gradually terminating or abandoning the incompatible activities. If necessary, other measures may be taken – in consultation with the respective authorities – such as transferring a criminal case to a colleague or instigating a disciplinary investigation.

179. As mentioned above, reports concerning declarations of ancillary functions are part of the annual job performance interviews. Managers can access these reports on the P-portal[42]. The reports allow managers to check whether there are any discrepancies, and let them decide if any further action is necessary. Should a manager surmise a mistake rather than abuse, s/he will discuss this with the employee. A more substantial procedure is indicated if the manager – prior to or after discussing this with the employee – suspects a violation of integrity. S/he will then advise the respective authority to instigate an integrity investigation.

180. A violation of integrity is defined in the Framework Memorandum on Integrity as "*an action, or the omission thereof, inside and outside duty hours, in the course of which a violation has occurred with respect to the law, policy rules, circulars, behavioural guidelines/codes of conduct, or with respect to the proper duties and responsibilities of a good civil servant, or a behaviour that results in an offence*". The holding of positions, activities or interests incompatible with the office of prosecutor, the performance of accessory activities that have not been declared or approved by the relevant authority, as well as disregard for the rules regarding the acceptance of gifts, are examples of behaviour giving rise to a suspicion of integrity violation and an integrity investigation.

181. Integrity investigations may be instigated *ex officio*, at the request of the prosecutor's superior, following a report filed by a citizen (by means of the complaints procedure or by other means) or another employee of the prosecution service, or following information coming from another source, such as another disciplinary or criminal investigation. Reports filed by citizens are channelled through the complaints procedure or through anonymous reporting to a whistleblowing hotline called "Contact Centre M" ("*Meld Misdaad Anoniem*" or "*Meldpunt M*"). Reports filed by employees of the OM may be addressed to the employee's superior, the confidential officer for integrity issues (see below) or anonymously to the Contact Centre M. Should the Contact Centre M deem a report sufficiently substantiated, it will forward it to the office where the alleged facts are said to have taken place. The different possibilities and procedures for reporting, as well as the follow-up to be given, are described in Guidelines for Reporting Violations of Integrity, adopted on 22 May 2012 by the Board of Procurators General, as part of the overall integrity policy within the OM. The competent authority, that is the chief district prosecutor, is responsible for the follow-up of the report. S/he always informs the BI-OM about a suspected violation of integrity (see paragraph 185).

182. Any report of a suspected integrity violation has to be processed according to an Instruction on the Handling of Violations of Integrity, also adopted on 22 May 2012 by the Board of Procurators General. A report triggers an integrity investigation, which usually consists of a number of phases: a preliminary investigation, a disciplinary investigation concerning the facts, and – if the authorities decide there are grounds for suspicion of dereliction of duty – a disciplinary process. At the end of this process, during which the person concerned is allowed to submit objections, the authorities decide whether a disciplinary sanction is justified. Depending on the nature of this measure, the competent authority to impose this sanction is the chief district prosecutor, the Board of Procurators General – by a majority vote – or the Crown.

183. Disciplinary sanctions applicable to integrity violations are the following (article 34b, Law on the organisation of the judiciary):

- Letter of admonishment;
- Reduction of leave;
- Special duties on unusual days;
- Fine (max. € 22) ;
- (partial) attachment of pay ;
- Reduction of pay grade ;

[42] The P-Portal is an electronic staff self-service portal, which allows managers and employees of the civil service to access and enter different information, such as leave, travel expenses, accessory activities etc.

- Denial of annual pay rise;
- Reduction of salary tier ;
- Transfer to another district;
- Suspension with or without denial of pay;
- Dismissal.

184. If there is a suspicion of a criminal offence committed by a prosecutor either in the course of his/her official duties, or in private, this must always be reported to the National Prosecutor for Internal Affairs. The Coordination Committee for the National Police Internal Investigations Department then decides on which department is to carry out the criminal investigation. The prosecution and trial of judicial officers is conducted according to the Code for Criminal Procedure and is the same as for all citizens. However, a judicial officer is never prosecuted and tried before his/her own (appellate) court, as the OM in such a case asks the Supreme Court to appoint another equivalent court to handle the case (article 510, Code of Criminal Procedure). Prosecutors do not enjoy any immunity.

185. In addition to its role in enhancing awareness of integrity within the prosecution service, the BI-OM also has a central position in the supervisory and enforcement mechanism. It receives and centralises information regarding all (suspected) violations of integrity and monitors the follow-up given, to ensure its uniformity at national level. At the request of the competent authority, the BI-OM may also provide support and advice on the handling of an integrity violation and perform an investigation into a (suspected) violation. A pool of eight investigators, coming from various units within the prosecution service, was recruited in April 2012 and trained to this end. The BI-OM is to produce by May 2013 an annual accountability report for the attention of the public (as part of the OM 2012 annual report) containing, among others, the number of integrity violations and the manner in which they were settled. A semi-annual report, in anonymous form, about the type of integrity violations and the sanctions imposed, is also to be prepared and made available throughout the prosecution service. The first of these semi-annual reports covers the period July-December 2012. It shows that 23 employees of the prosecution service were suspected of violations of integrity, of which one concerned case a prosecutor, for misuse of position and/or conflict of interest. The sanction imposed was conditional disciplinary dismissal**.**

186. Communication about violations also forms part of the OM's integrity policy, along the lines of Communication Guidelines in the event of Violations of Integrity, adopted on 22 May 2012 by the Board of Procurators General. This document takes account of the fact that the consequences of violations of integrity can be considerable, both for the operation of the prosecution service and for its image in the public. It aims at showing that such violations trigger an immediate and adequate reaction from the OM. The document encourages open communication about integrity-related incidents, as a way of discouraging the circulation of unfounded rumours in the public and because of its potential internal learning effect. It also takes privacy concerns into account and explains when and how to communicate internally and externally, both during the investigation stage and after completion of the investigation.

187. The GET is pleased to note that the prosecution service, while focusing on a preventive approach towards corruption and integrity matters, does not disregard the fact that enforcement and accountability mechanisms are equally necessary. It takes the view that a sound policy is in place and particularly welcomes the attention given, in the different instructions and guidelines that were recently adopted, to spelling out possible integrity violations and their consequences for the perpetrators, the prosecution service as a whole and the public.

Statistics

188. The authorities have provided the following statistics of suspected and confirmed cases of integrity violations in 2009-2011. It is to be noted that that this data reflects (suspected) incidents within the entire prosecution service and does not differentiate between prosecutors and other staff (civil servants).

Integrity report 2010 - 2011

Number of individuals suspected of integrity violations	64 cases
Number of individuals suspected of integrity violations which are confirmed	62 cases

Type of – suspected – violations	**Reports/ suspicions**	**Number confirmed**
Total number of individuals – suspected of-: financial violations	5 cases	6 cases
Total number of individuals – suspected of-: misuse of position and conflict of interest	8 cases	4 cases
Total number of individuals – suspected of-: leaking/misuse of information	11 cases	6 cases
Total number of individuals – suspected of-: abuse of authority	4 cases	8 cases
Total number of individuals – suspected of-: abuse of the authority to use force	0 cases	0 cases
Total number of individuals – suspected of-: unwanted intimacy/behaviour	8 cases	8 cases
Total number of individuals – suspected of-: domestic abuse	15 cases	9 cases
Total number of individuals – suspected of-: misuse of official provisions / transgression of internal regulations	13 cases	21 cases
Total number of individuals – suspected of-: misuse in accordance with whistleblower regulations	0 cases	0 cases
Total number of types of violation	**64 cases**	**62 cases**

(Note: more than one violation per individual possible)

(Administrative / Official) Treatment	
Full factual investigation	34 cases
Only preliminary investigation	28 cases
No investigation	5 cases
Unknown	3 cases
	70 cases

Investigation branch (supervised by the respective authority)	
Internal Investigation	57 cases
External investigation	14 cases

Charges filed with the Prosecution Service	
Charges filed with the Prosecution Service	17 cases

Sanction

a) Disciplinary (Note: for each individual only the most serious sanction is listed here)	**conditional**	**unconditional**
Letter of admonishment	0 case	13 cases
Special duties	0 case	0 cases
Reduction of leave	0 case	0 cases
Financial remuneration	0 case	4 cases
Transfer	0 case	2 cases
Suspension and denial of pay	0 case	2 cases
Disciplinary dismissal	4 cases	10 cases
Total disciplinary	**4 cases**	**31 cases**

Other sanctions / official sanction (letter of intent to sanction, coaching, etc.)	1 case	11 cases
No sanction	1 case	19 cases
Total sanctions	**6 cases**	**61 cases**

b) Criminal prosecution (processed internally)	
Conviction	4 cases
Financial settlement / fine	2 cases
Case dismissed by Prosecution office	1 case
Other	2 cases
Unknown	5 cases

Integrity report 2009

The reporting format for integrity violations has changed since 2009

Reported in 2009

Total number of confirmed cases of conflict of interest	0 case
Total number of confirmed cases of fraud/theft	4 cases
Total number of confirmed cases leaking information / violating secrecy	1 case
Total number of confirmed cases of abuse of authority	2 cases
Total number of confirmed cases of misuse of official provisions	2 cases
Total number of confirmed cases of unwanted intimacy / behaviour	14 cases
Total number of confirmed cases of suspected abuse	3 cases
Total number of confirmed integrity violations	26 cases

Treatment

Internal investigation	15 case
External investigation	4 cases
Charges filed with the Prosecution Service	0 case

Sanction

Disciplinary	**conditional**	**unconditional**
Admonishment	3	2
Special duties	0	0
Reduction of leave	1	0
Fine	0	0
Attachment of pay	0	0
Salary cut	0	0
Denial of annual pay raise	0	0
Denial to enter a higher salary tier	1	0
Pay reduced to lower salary tier	1	0
Transfer	0	0
Suspension and denial of pay	1	1
Dismissal	6	2
Other	4	0
Total disciplinary sanctions	**17**	**5**
Criminal prosecution Number of convictions	1 case	0 case

Investigations by the National Police – Internal Investigations Department, involving both the adjudicative branch of the judiciary (judges) and the Prosecution Service (prosecutors)

2009	1
2010	2
2011	5

Advice, training and awareness

189. Several training courses on ethics and integrity are offered to prosecutors by the SSR, the Study Centre for the Judiciary. The curriculum of the compulsory introduction course for starting prosecutors comprises a half-day session about moral dilemmas as one of its regular topics. In 2012, a refresher course on this subject was added at the request of prosecutors. Integrity and management is also a compulsory part of the managerial training programme. The SSR also offers optional training courses enabling prosecutors as well as other staff to explore ethical and moral dilemmas, such as professional ethics in daily practice and managing moral dilemmas. Other courses offered deal in part with integrity matters, such as the anti-corruption training and the integrity of the financial markets training. The GET was informed that, in the context of the integrity policy, the intention was to increase the offer for such courses on various professional subjects, in which integrity issues are embedded in the course. It was felt that such a transversal approach would better show that ethical dilemmas form an integral part of prosecutors' daily work and would encourage them to discuss these issues with colleagues on a regular basis. This approach is being implemented as from 2013, starting with a discussion between BI-OM and the SSR on how to train teachers on integrity subjects and how to further enlarge the attention for professional dilemmas, both in initial training and refresher courses.

190. Regular discussions about integrity and ethical dilemmas which, as explained above, are among the main goals of the integrity policy, are also ensured in each prosecutor's office through intervision (see paragraph 128) and the quality management programme. In the framework of this programme, which aims at increasing the quality of prosecutorial decisions, regular discussions and consultations are organised around concrete cases. These discussions may touch upon any aspect of a case, including its ethical aspects.

191. The BI-OM is naturally one of the main stakeholders of the integrity awareness policy and its responsibilities include the preparation and dissemination of awareness materials. It started an awareness campaign in October 2012 to present new integrity-related materials. All procedures and documents mentioned in this report have namely been collected in an Integrity Manual, which is available on the prosecution service intranet. A newsletter is issued every few months and draws attention to certain integrity issues. An Integrity Tool Kit was also prepared and distributed throughout the prosecution service in 2012, to promote further debate regarding integrity. It consists of a DVD, accompanied by a written guide and an interview protocol. This tool kit is to be used in particular by superior officers, who are to lead discussions within their team about the professional dilemmas presented on the DVD. To support this activity, the national programme manager for integrity matters and the integrity coordinator visited all management teams within the OM to introduce the DVD and to raise managers' awareness on their role in discussions about integrity and professional dilemmas.

192. Another important element for enhancing the dialogue about integrity are confidential integrity officers, who have been trained and assigned in 2012 to each prosecution service organisational unit. They are to take on a leading role in promoting and discussing integrity, to act as first echelon contact for employees having questions, seeking advice or wishing to report a suspected integrity violation and to provide advice to managers on integrity issues.

193. As expressed above, the GET is convinced of the merits of the comprehensive integrity policy carried out since 2012 by the prosecution service. Given the considerable investment that has been devoted to the development of the different aspects of this policy, the GET thinks it would be worthwhile to systematically follow up on its results, in order to make the necessary adjustments and fine-tuning. **GRECO recommends that an evaluation of the integrity policy and of its effects on integrity awareness among the members of the prosecution service be carried out, with a view to improving or updating this policy where necessary.**

VI. RECOMMENDATIONS AND FOLLOW-UP

194. In view of the findings of the present report, GRECO addresses the following recommendations to the Netherlands:

Regarding members of Parliament

i. **that codes of conduct for the members of both Chambers of Parliament be developed and adopted with the participation of their members and be made easily accessible to the public (including notably guidance on prevention of conflicts of interest, gifts and other advantages, accessory activities and financial interests, disclosure requirements, misuse of information, contacts with third parties such as lobbyists)** (paragraph 36);

ii. **that (i) current disclosure requirements applicable to the members of both Chambers of Parliament be reviewed with a view to increasing the categories of interests and the level of detail to be reported, so as to provide all the relevant and necessary information on interests of members of Parliament (e.g. outside activities and positions, assets, liabilities) and (ii) that consideration be given to widening the scope of disclosure to include information on spouses and dependent family members, as appropriate (it being understood that such information would not necessarily need to be made public)** (paragraph 55);

iii. **that appropriate measures be taken to ensure supervision and enforcement of the existing and yet-to-be established declaration requirements and other rules of conduct of members of Parliament** (paragraph 61);

iv. **in respect of both Chambers of Parliament, (i) the establishment of a specific source of confidential counselling with the mandate to provide parliamentarians with guidance and advice on ethical questions and possible conflicts of interests in relation to specific situations; and (ii) the provision of specific and periodic training for all parliamentarians on ethical questions and conflict of interests** (paragraph 64);

Regarding judges

v. **that a restriction on the simultaneous holding of the office of judge and that of member of either Chamber of Parliament be laid down in law** (paragraph 96);

vi. **that regulations, guidelines and policies be reviewed to ensure that substitute judges have appropriate standards and guidance on conflicts of interest and other integrity-related matters** (paragraph 100);

Regarding prosecutors

vii. **that an evaluation of the integrity policy and of its effects on integrity awareness among the members of the prosecution service be carried out, with a view to improving or updating this policy where necessary** (paragraph 193).

195. Pursuant to Rule 30.2 of the Rules of Procedure, GRECO invites the authorities of the Netherlands to submit a report on the measures taken to implement the above-

mentioned recommendations by 31 December 2014. These measures will be assessed by GRECO through its specific compliance procedure.

196. GRECO invites the authorities of the Netherlands to authorise, at their earliest convenience, the publication of this report, to translate the report into their national language and to make the translation publicly available.

About GRECO

The Group of States against Corruption (GRECO) monitors the compliance of its 49 member states with the Council of Europe's anti-corruption instruments. GRECO's monitoring comprises an "evaluation procedure" which is based on country specific responses to a questionnaire and on-site visits, and which is followed up by an impact assessment ("compliance procedure") which examines the measures taken to implement the recommendations emanating from the country evaluations. A dynamic process of mutual evaluation and peer pressure is applied, combining the expertise of practitioners acting as evaluators and state representatives sitting in plenary.

The work carried out by GRECO has led to the adoption of a considerable number of reports that contain a wealth of factual information on European anti-corruption policies and practices. The reports identify achievements and shortcomings in national legislation, regulations, policies and institutional set-ups, and include recommendations intended to improve the capacity of states to fight corruption and to promote integrity.

Membership in GRECO is open, on an equal footing, to Council of Europe member states and non-member states. The evaluation and compliance reports adopted by GRECO, as well as other information on GRECO, are available at www.coe.int/greco.